

West's Louisiana Statutes Annotated  
Louisiana Civil Code  
Book I. Of Persons  
Title V. Divorce  
Chapter 2. Provisional and Incidental Proceedings  
Section 3. Child Custody

LSA-C.C. Bk. I, T. V, Ch. 2, § 3, Refs & Annos  
Currentness

**Editors' Notes**

**REVISION--ACTS 1993, NO. 261**

<On recommendation of the Louisiana State Law Institute, Acts 1993, No. 261, § 1 amended and reenacted Section 3 of Chapter 2 of Title V of Book I of the Civil Code, formerly containing [C.C. arts. 131 to 158](#), to contain [C.C. arts. 131 to 136](#).>

<For disposition of the subject matter affected by the 1993 amendment and reenactment, see Disposition Table, post.>

**REDESIGNATIONS--1990**

<Prior to the 1993 revision, the Louisiana State Law Institute, on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10, both effective January 1, 1991, redesignated [Civil Code articles 146, 146.1, 147, 157, and 158](#) as [C.C. arts. 131, 132, 133, 134, and 135](#) to form Section 3 of Chapter 2 of Title V of Book I under the heading "Child Custody".>

LSA-C.C. Bk. I, T. V, Ch. 2, § 3, Refs & Annos, LA C.C. Bk. I, T. V, Ch. 2, § 3, Refs & Annos  
Current through the 2012 Regular Session.

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**DISPOSITION--TABLE**

Showing where the subject matter rearranged by Acts 1993, No. 261 may be found following amendment, reenactment, enactment, repeal, and redesignation by that Act of laws relative to child custody, visitation, and support.

<b>Former Civil Code Article</b>	<b>New Classification Acts 1993, No. 261</b>
131	
(A).....	C.C. arts. 131, 132, 133
(1).....	C.C. art. 141, R.S. 9:335
(c).....	R.S. 9:337
(B).....	C.C. art. 133
(C)	
(1).....	(none)
(2).....	C.C. art. 134
(D).....	R.S. 9:335, 9:336
(E).....	(none)
(F).....	(none)
(G).....	C.C. art. 135
(H).....	R.S. 9:331
(I).....	R.S. 9:332
(J).....	R.S. 9:351
(K).....	(none)
132.....	C.C. art. 136

133.....R.S. 9:341  
134.....C.C. art. 131  
135.....C.C. art. 141

**Former Revised  
Statute Section**

**New Revised Statute Section Acts 1993, No. 261**

9:309.....R.S. 9:315.22  
9:312.....R.S. 9:342  
9:313.....R.S. 13:4291  
9:314.....R.S. 9:315.23  
9:351.....R.S. 9:332  
9:376.....R.S. 9:345  
  
9:572  
(A).....R.S. 9:344  
(B).....(none)  
(C).....R.S. 9:344  
(D).....R.S. 9:344  
9:573.....R.S. 9:343  
9:574.....(none)  
9:310.....R.S. 9:315.21  
9:311.....C.C. art. 142  
9:351.....R.S. 9:332  
9:353.....R.S. 9:332, 9:333  
9:354.....R.S. 9:332  
9:355.....R.S. 9:332  
9:356.....R.S. 9:332

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LSA-C.C. Art. 131

Art. 131. Court to determine custody

Currentness

In a proceeding for divorce or thereafter, the court shall award custody of a child in accordance with the best interest of the child.

**Credits**

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994.

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS--1990 LEGISLATION**

<Acts 1990, Nos. 99, 361, 1008, and 1009 enacted, amended, redesignated, or repealed numerous Civil Code articles relating to marriage dissolution found in Chapter 4 of Title IV of Book I and in Title V of Book I. The remaining articles therein were redesignated by the Louisiana State Law Institute on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10. For disposition of the subject matter of these articles following the 1990 acts and redesignations, see Disposition Table preceding [C.C. art. 102](#) in LSA.>

**APPLICATION AND TRANSITIONAL PROVISIONS--ACTS 1993, NO. 261**

<Section 1 of Acts 1993, No. 261 amends and reenacts this article. [R.S. 9:387](#) (redesignated as [R.S. 9:385](#) by Acts 1997, No 1078), as enacted by § 8 of the same Act provides:>

<“§ 385. Actions pending on effective date of child custody and support revision act; law governing>

<“Acts 1993, No. 261 does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1994, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1994.”>

**REVISION COMMENTS--1993**

(a) This Article simplifies the relevant language of the source article, former Civil Code Article 131 (1992), but does not change the law. It retains the best interest of the child as the overriding test to be applied in all child custody determinations. The primacy of that test has been statutorily mandated in Louisiana since 1979 (C.C.Arts. 134, 131(A) (1992); Acts 1979, No. 718), and the best interest principle itself has been jurisprudentially and legislatively recognized at least since 1921. See [Kieffer v. Heriard](#), 221 La. 151, 58 So.2d 836 (1952); [Brewton v. Brewton](#), 105

[So. 307 \(La.1925\)](#); prior [C.C. Art. 157](#), as amended by Acts 1921, First Ex.Sess., No. 38. The best interest standard is the fundamental principle governing all the articles of this Section.

(b) Under this Article an action to determine custody may be instituted either in conjunction with or after the associated divorce action. An action may be brought in one of the venues provided by [Code of Civil Procedure Article 74.2](#). See also [Code of Civil Procedure Article 3822](#), providing for venue in habeas corpus actions. A custody action does not have to be brought in the same venue as the associated divorce action. See [C.C.P. Art. 74.2\(A\)](#). See also [Howard v. Howard, 409 So.2d 279 \(La.App. 4th Cir.1981\)](#) (Custody action has basis independent of divorce for venue purposes.).

(c) Under [Article 2592 of the Code of Civil Procedure](#) (rev. 1990), an action to determine child custody is triable by summary process, whether instituted in conjunction with or after the associated divorce suit.

(d) This Article should be followed in actions to change custody as well as in those to initially set it. An additional, jurisprudential requirement is imposed in actions to change custody decisions rendered in considered decrees, however. In such actions the proponent of change must show that a change of circumstances has occurred such that “the continuation of the present custody is so deleterious to the child as to justify a modification of the custody decree, or ... that the harm likely to be caused by a change of environment is substantially outweighed by its advantages to the child.” [Bergeron v. Bergeron, 492 So.2d 1193, 1200 \(La.1986\)](#). Accord: [Smith v. Smith, 559 So.2d 48 \(La.App. 4th Cir.1990\)](#). This burden of proof is imposed by the jurisprudence as a means of implementing the best interest standard in light of the special considerations present in change of custody cases.

(e) An action to fix custody brought in a court of this state may form the basis for a plea of lis pendens in relation to another such action instituted in the same or a different court between the same parties for custody of the same child. The fact that one of the claims is associated with a divorce action does not change this result (Compare [State v. Aucoin, 174 La. 7, 139 So. 645 \(La.1932\)](#).), because custody actions are now treated as independent causes of action, and not merely as matters ancillary to divorce actions. See [C.C.P. Art. 74.2](#); [Fournier v. Fournier, 475 So.2d 400 \(La.App. 1st Cir.1985\)](#) (custody action not “incidental” to separation suit for venue purposes); [Howard v. Howard, 409 So.2d 279 \(La.App. 4th Cir.1981\)](#) (same). See [Lewis v. Lewis, 404 So.2d 1230 \(La.1981\)](#) (Child support order rendered in Louisiana separation suit had independent basis and so would be given effect over later foreign divorce judgment.).

## [Notes of Decisions \(1037\)](#)

LSA-C.C. Art. 131, LA C.C. Art. 131

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LSA-C.C. Art. 132

Art. 132. Award of custody to parents

Currentness

If the parents agree who is to have custody, the court shall award custody in accordance with their agreement unless the best interest of the child requires a different award.

In the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the parents jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the court shall award custody to that parent.

**Credits**

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994.

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS--1990 LEGISLATION**

<Acts 1990, Nos. 99, 361, 1008, and 1009 enacted, amended, redesignated, or repealed numerous Civil Code articles relating to marriage dissolution found in Chapter 4 of Title IV of Book I and in Title V of Book I. The remaining articles therein were redesignated by the Louisiana State Law Institute on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10. For disposition of the subject matter of these articles following the 1990 acts and redesignations, see Disposition Table preceding [C.C. art. 102](#) in LSA.>

**APPLICATION AND TRANSITIONAL PROVISIONS--ACTS 1993, NO. 261**

<Section 1 of Acts 1993, No. 261 amends and reenacts this article. [R.S. 9:387](#) (redesignated as [R.S. 9:385](#) by Acts 1997, No. 1078), as enacted by § 8 of the same Act provides:>

<“§ 385. Actions pending on effective date of child custody and support revision act; law governing>

<“Acts 1993, No. 261 does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1994, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1994.”>

**REVISION COMMENTS--1993**

(a) This Article changes and supplements the relevant portions of the source provision, former Civil Code Article 131(A) (1992).

(b) Under this Article the agreement of the parents, if any, regarding the allocation of custody is controlling when it is consistent with the child's best interest. The agreement may include an agreement for sole custody in one parent, joint parental custody, or even an award of custody to a third person. If there is no agreement, or if the agreement is not in the best interest of the child, the court must award joint custody, unless custody in one parent is shown by clear and convincing evidence to be in the child's best interest. This latter provision is intended to strengthen the preference for joint custody provided for in former Civil Code Article 131(A).

(c) The second sentence of this Article governs the decision whether to award joint custody. The legal effects of joint custody, once it is awarded, are addressed in [R.S. 9:335 \(1993\)](#).

(d) As of 1989, 36 states had statutes that explicitly authorized joint custody. Of those 36 states, 12 states declared a general presumption in favor of joint custody, 5 states declared a presumption in favor of joint custody where both parents agreed to it, and the remainder made joint custody an explicit option without any presumption for or against it. 10 "Fairshare" No. 3, at 6 (March 1990).

#### [Notes of Decisions \(208\)](#)

LSA-C.C. Art. 132, LA C.C. Art. 132

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LSA-C.C. Art. 133

Art. 133. Award of custody to person other than a parent; order of preference

Currentness

If an award of joint custody or of sole custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

**Credits**

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994.

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS--1990 LEGISLATION**

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**REVISION COMMENTS--1993**

(a) This Article reproduces the relevant portions of the source provisions, former Civil Code Article 131(A) & (B) (1992), without substantial change. The redundant dual test for divestiture of parental custody found in the source article has been replaced with a similar, but briefer, provision.

(b) The requirement of proof that parental custody would result in “substantial harm” to the child that is stated in this Article represents a change in the terminology of the test for divestiture of parental custody. The new language, which is not entirely new to Louisiana law ([Pittman v. Jones](#), 559 So.2d 990, 993 (La.App. 4th Cir.1990); In the [Matter of Stewart](#), 602 So.2d 212, 214 (La.App. 3d Cir.1992)), has been adopted because it represents an efficient means of giving effect to a parent's paramount right to custody of his child as against any nonparent. The primacy of that parental right was recognized by the Louisiana jurisprudence long before it was given effect by the legislature in 1982. See prior [C.C. Art. 146](#) as amended by 1982 La.Acts, No. 307; [Wood v. Beard](#), 290 So.2d 675 (La.1974). Prior to the 1982 introduction of the two-part statutory test that parental custody be shown to be “detrimental” to the child and that divestiture be “required to serve the best interest of the child,” the courts had followed the jurisprudential formula: “the parent ... may be deprived of ... custody only when (he) has forfeited his or her right to parenthood, ... is unfit, or ... is unable to provide a home for the child.” [Deville v. LaGrange](#), 388 So.2d 696, 697-98 (La.1980). See also [Jones v. Jones](#), 415 So.2d 300 (La.App. 2d Cir.1982) (Use of best interest standard was improper in custody contest between parent and nonparent.). That jurisprudential language was of course substantially different from the statutory language adopted in 1982, and at least one court accordingly held that the 1982 enactment had changed the law, giving the courts “more freedom or latitude to pursue the goal of insuring that the best interest of the child is served in resolving custody disputes between parent and nonparent litigants.” [Boyett v. Boyett](#), 448 So.2d 819, 822 (La.App. 2d Cir.1984). A similar argument (although most likely to the opposite effect) could be made again under this revision, which does indeed change the terms of the relevant test significantly. However, it is clear that the heart of the parental primacy concept, the rule that a nonparent always bears the burden of proof in a custody contest with a parent, was not disturbed by the prior statutory enactment, and likewise has not been affected by this revision. See [Love v. Love](#), 536 So.2d 1278 (La.App. 3d Cir.1988); [Boyett v. Boyett](#), *supra*; [Deville v. LaGrange](#), *supra*.

(c) The use of the singular “person” in this Article (Cf. items (3) and (4) of former Civil Code Article 131(A)) is in accordance with standard drafting practice ([C.C. Art. 3506\(2\) \(1870\)](#)), and is intended to rule out any inference that this Article might require the awarding of joint custody between nonparents under the specified circumstances. An award of joint custody to nonparents is not precluded, however. Cf. [Schloegel v. Schloegel](#), 584 So.2d 344 (La.App. 4th Cir.1991) (award of joint custody between child's father and maternal grandmother upheld as within trial court's discretion).

#### [Notes of Decisions \(222\)](#)

LSA-C.C. Art. 133, LA C.C. Art. 133

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LSA-C.C. Art. 134

Art. 134. Factors in determining child's best interest

Currentness

The court shall consider all relevant factors in determining the best interest of the child. Such factors may include:

- (1) The love, affection, and other emotional ties between each party and the child.
- (2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.
- (3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.
- (4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.
- (5) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (6) The moral fitness of each party, insofar as it affects the welfare of the child.
- (7) The mental and physical health of each party.
- (8) The home, school, and community history of the child.
- (9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.
- (10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.
- (11) The distance between the respective residences of the parties.

(12) The responsibility for the care and rearing of the child previously exercised by each party.

#### Credits

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994.

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### REVISION COMMENTS--1993

(a) This Article preserves the list of factors formerly found in [Civil Code Article 131\(C\)\(2\) \(1992\)](#) but changes their import. Under the former provision the listed factors were to be considered by the court in determining whether the evidentiary presumption in favor of joint custody imposed by that article was rebutted. Under this revision the factors are simply provided as a guide to the court in making the fundamental finding as to what disposition is in the best interest of the child.

(b) The list of factors provided in this Article is nonexclusive, and the determination as to the weight to be given each factor is left to the discretion of the trial court. This would seem to represent a change from the source provision, which required the court to reach its decision only “after consideration of evidence introduced with respect to all” the factors listed in the article. [C.C. Art. 131\(C\)\(2\) \(1992\)](#). That unequivocal language was added to the text of that article in 1983 (by Acts 1983, No. 695, eff. Aug. 30, 1983), and there does not appear to have been any decision thus far reversing a trial court's decision for failure to consider all of the listed factors. See also [Turner v. Turner, 455 So.2d 1374, at 1377 n. 2 \(La.1984\)](#) (checklist only intended “to provide guidance for the courts”). The appellate courts have reiterated the traditional rule that a trial court's custody award will not be disturbed absent a manifest abuse of discretion. [Goldman v. Logue, 461 So.2d 469 \(La.App. 5th Cir.1984\)](#); [Stewart v. Stewart, 460 So.2d 59 \(La.App. 1st Cir.1984\)](#); see also [Fulco v. Fulco, 259 La. 1122, 254 So.2d 603 \(La.1971\)](#) (traditional discretion rule). This revision does not change that rule.

(c) The illustrative nature of the listing of factors contained in this Article gives the court freedom to consider additional factors. See [Turner v. Turner](#), 455 So.2d 1374 (La.1984) (court allowed, even obligated, to consider additional factor of inability of parents to get along); [Goldman v. Logue](#), 461 So.2d 469 (La.App. 5th Cir.1984) (same); [Krotoski v. Krotoski](#), 454 So.2d 374 (La.App. 4th Cir.1984) (Trial court properly considered fact that if primary physical custody was granted to mother in California, grandparents would be available to assist in caring for child, whereas the father in Baton Rouge could only provide a stranger to the child to assist him.). In general, the court should consider the totality of the facts and circumstances of the individual case. [Theriot v. Huval](#), 413 So.2d 337 (La.App. 3d Cir.1982).

(d) This Article should be followed in actions to change custody, as well as in those to fix it initially. But see comment (d) to [Article 131](#), *supra*.

(e) The language used in factor (2) of this Article is intended to reproduce the substance of former Civil Code Article 131(C)(2)(b).

(f) Factor (6) of this Article has been amended in order to state what is believed to be the better rule on the much-litigated issue addressed by it. Its predecessor, factor (f) of [Civil Code Article 131\(C\)\(2\) \(1992\)](#), read simply “(t)he moral fitness of the parties involved.” The language added here brings the statutory provision into line with the fundamental principle that the purpose of every custody award is to secure the best interest of the child, not to regulate the behavior of his parents. [Stephenson v. Stephenson](#), 404 So.2d 963 (La.1981) (upholding award of custody to wife whose past adulterous behavior was not shown to have had any detrimental effect on the children); [Cleeton v. Cleeton](#), 383 So.2d 1231 (La.1980) (same). See also [Monsour v. Monsour](#), 347 So.2d 203 (La.1977) (same: primary consideration was welfare of child, not past misconduct of custodian). But see [Bagents v. Bagents](#), 419 So.2d 460 (La.1982) (upholding change of custody from mother who had lived in open concubinage in the custodial home). The rule embodied in this Article should apply not only to past misconduct, as in the cases just cited, but also to continuing immorality that does not harm the child. See [Rollins v. Rollins](#), 521 So.2d 647 (La.App. 1st Cir.1988), writ denied 522 So.2d 573 (La.1988) (joint custody not modified where there was no showing that mother's discrete illicit relationship had detrimental effect on child); [Montgomery v. Marcantel](#), 591 So.2d 1272 (La.App. 3d Cir.1991) (change of custody to sole custody in wife due to father's living in concubinage reversed in absence of evidence of detrimental effect on child); [Peters v. Peters](#), 449 So.2d 1372 (La.App. 2d Cir.1984) (upholding judgment refusing to take child from custody of mother who was living in concubinage with man she planned to marry); [Peyton v. Peyton](#), 457 So.2d 321 (La.App. 2d Cir.1984) (upholding equal joint custody award where both parents were engaged in discrete sexual relationships that had no adverse effect upon the child).

(g) Factor (9) of this Article permits the court to consider the preference of the child as to custody “if the court deems the child to be of sufficient age to express a preference.” This formula has been preserved unchanged from the predecessor provision, former Civil Code Article 131(C)(2)(i). Under [Article 601 of the Louisiana Code of Evidence](#) (West 1992) and [R.S. 13:3665](#) (1968 and Supp.1992), on the other hand, the general test for testimonial competency of a child is not his age, but whether the court finds him to be “of proper understanding.” Because of the kinds of conclusions that these provisions require from the trial judge, these two tests overlap to a considerable extent, but they are not identical. In [Watermeier v. Watermeier](#), 462 So.2d 1272 (La.App. 5th Cir.1985), writ denied 464 So.2d 301 (La.1985), the court applied the general competency provisions in holding that a child of five years and seven months could testify in a custody hearing. The decision in that case, however, did not state whether the child had testified about factual issues or about his preference as to custody. Arguably, a very young child's statement of preference might reasonably be deemed admissible even though his testimony as to matters of fact would not. This revision leaves that question to be answered by the courts. See, e.g., [Matter of Fox](#), 504 So.2d 101 (La.App. 2d Cir.1987), writ denied 504 So.2d 556 (La.1987) (six-year old is too young to express reasonable preference). The procedural rulings of the Watermeier decision (permitting the court to question the child in chambers with the parties' attorneys present solely as observers) are unexceptionable.

(h) Factor (11) of this Article permits the court to take into account the distance between the residences of the parties, a consideration that is often important both as it affects the welfare of the child and as it affects the practicalities of the post-divorce relationship of the parents with the child. See, e.g., [Doyle v. Doyle](#), 465 So.2d 167 (La.App. 3d Cir.1985), writ denied 467 So.2d 1136 (La.1985); [Lachney v. Lachney](#), 446 So.2d 923 (La.App. 3d Cir.1983), writ denied 450 So.2d 964 (La.1984). The Louisiana Legislature elaborated upon this factor, which was also in former Civil Code Article 131, in 1986 when it enacted a special provision to the effect that the presumption in favor of joint custody would cease to exist if a parent moved out of state. That provision has not been retained in this revision because the presumption has not, and because the matter is sufficiently provided for by the inclusion of factor (11) in this Article. See former C.C. Art. 131(K) (1992). See also [Meyers v. Meyers](#), 561 So.2d 875, 878 (La.App. 2d Cir.1990); [Edwards v. Edwards](#), 556 So.2d 207, 209 (La.App. 2d Cir.1990) (mother's remarriage and impending removal from state constituted change of circumstances sufficient to justify termination of joint custody award).

(i) Factor (12) of this Article is new. It is a significant factor that was not included in former Civil Code Article 131 but which has sometimes been considered by Louisiana courts. See [Edwards v. Edwards](#), 556 So.2d 207, 209 (La.App. 2d Cir.1990); [Quinn v. Quinn](#), 412 So.2d 649 (La.App. 2d Cir.1982), writs denied 415 So.2d 941, 945 (La.1982); [Nale v. Nale](#), 409 So.2d 1299 (La.App. 2d Cir.1982). See also [Garska v. McCoy](#), 278 S.E.2d 357 (W.Va.1981); Neely, "The Primary Caretaker Parent Rule: Child Custody and The Dynamics of Greed," 3 Yale Law & Policy Review 168 (1984). The responsibility for child rearing previously exercised by the parties may be evaluated by identifying which of them had primary responsibility during the marriage for the following duties concerning the child: (1) preparing and planning meals for the child; (2) bathing, grooming, and dressing him; (3) purchasing, cleaning, and caring for his clothes; (4) obtaining and providing medical care, including nursing and trips to physicians; (5) arranging for social interaction among the child's peers after school, e.g. transporting the child to friends' houses or to girl or boy scout meetings; (6) arranging alternative care, e.g. baby-sitting, day-care, etc.; (7) putting the child to bed at night, attending to the child in the middle of the night, waking the child in the morning; (8) disciplining him, including teaching him general manners and toilet training; (9) obtaining and providing education (religious, cultural, or social) for the child; and (10) teaching him elementary skills, e.g. reading, writing and arithmetic. [Garska v. McCoy](#), 278 S.E.2d at 363.

#### COMMENT--2012 REVISION

The facilitation of the relationship between the child and the other party described in factor (10) may include a party's willingness to make travel arrangements and facilitate electronic communications that allow the child meaningful time with both parties and that minimize the negative impact of long-distance parenting on the child.

#### [Notes of Decisions \(330\)](#)

LSA-C.C. Art. 134, LA C.C. Art. 134  
Current through the 2012 Regular Session.

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LSA-C.C. Art. 135

Art. 135. Closed custody hearing

Currentness

A custody hearing may be closed to the public.

**Credits**

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994.

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS--1990 LEGISLATION**

<Acts 1990, Nos. 99, 361, 1008, and 1009 enacted, amended, redesignated, or repealed numerous Civil Code articles relating to marriage dissolution found in Chapter 4 of Title IV of Book I and in Title V of Book I. The remaining articles therein were redesignated by the Louisiana State Law Institute on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10. For disposition of the subject matter of these articles following the 1990 acts and redesignations, see Disposition Table preceding [C.C. art. 102](#).>

**APPLICATION AND TRANSITIONAL PROVISIONS--ACTS 1993, NO. 261**

<Section 1 of Acts 1993, No. 261 amends and reenacts this article. [R.S. 9:387](#) (redesignated as [R.S. 9:385](#) by Acts 1997, No. 1078), as enacted by § 8 of Acts 1993, No. 261 provides:>

<“§ 385. Actions pending on effective date of child custody and support revision act; law governing>

<“Acts 1993, No. 261 does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1994, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1994.”>

**REVISION COMMENTS--1993**

This Article is based on former Civil Code Article 131(G) (1992). It changes the law, affording the court greater flexibility in choosing the setting for a closed custody hearing.

LSA-C.C. Art. 135, LA C.C. Art. 135  
Current through the 2012 Regular Session.

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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 136

Art. 136. Award of visitation rights

Effective: June 12, 2012

[Currentness](#)

- A. A parent not granted custody or joint custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would not be in the best interest of the child.
- B. A grandparent not granted custody of a child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. Before making this determination, the court shall hold a contradictory hearing as provided for in [R.S. 9:345](#) in order to determine whether the court should appoint an attorney to represent the child.
- C. Under extraordinary circumstances, any other relative, by blood or affinity, or a former stepparent or stepgrandparent, not granted custody of the child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. Extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.
- D. In determining the best interest of the child under Paragraphs B and C of this Article, the court shall consider:
- (1) The length and quality of the prior relationship between the child and the relative.
  - (2) Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.
  - (3) The preference of the child if he is determined to be of sufficient maturity to express a preference.
  - (4) The willingness of the relative to encourage a close relationship between the child and his parent or parents.
  - (5) The mental and physical health of the child and the relative.
- E. In the event of a conflict between this Article and [R.S. 9:344](#), the provisions of the statute shall supersede those of this Article.

**Credits**

Acts 1993, No. 261, § 1, eff. Jan. 1, 1994. Amended by Acts 1995, No. 57, § 1; Acts 2009, No. 379, § 2; Acts 2012, No. 763, § 1, eff. June 12, 2012.

**Editors' Notes**

**APPLICATION AND TRANSITIONAL PROVISIONS--ACTS 1993, NO. 261**

<Section 1 of Acts 1993, No. 261 amends and reenacts this article. [R.S. 9:387](#) (redesignated as [R.S. 9:385](#) by Acts 1997, No. 1078), as enacted by § 8 of Acts 1993, No. 261 provides:>

<“§ 385. Actions pending on effective date of child custody and support revision act; law governing>

<“Acts 1993, No. 261 does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1994, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1994.”>

**REVISION COMMENTS--1993**

(a) This Article reproduces former Civil Code Article 132 as amended by [Acts 1992, No. 782](#). The third paragraph of the source Article has been amended to reflect the designation scheme followed in this revision, without changing the law.

(b) The first paragraph of this Article restates the test for parental visitation established in the leading case of [Maxwell v. LeBlanc, 434 So.2d 375 \(La.1983\)](#). That case set forth a comprehensive body of rules governing visitation, all of which were jurisprudential in nature, because Louisiana did not have statutory provisions concerning child visitation prior to 1988. ([Acts 1988, No. 817](#) enacted prior [C.C. Art. 146.1](#), later redesignated as [C.C. Art. 132](#).) Nevertheless, this Article is not intended to affect the Maxwell case, except for the court's declaration that visitation is a “species of custody,” which is no longer strictly true, since visitation has an independent basis under this Article.

(c) The first paragraph of this Article applies to parents of illegitimate, as well as legitimate, children. [Maxwell v. LeBlanc, supra](#), at 377. There may be special facts militating against visitation in such cases that are not present in most cases involving legitimate children, however. See *id.* at 379-380.

(d) The second paragraph of this Article provides a general rule regarding visitation of nonparents, of which the provisions of [R.S. 9:344](#) and [9:345](#) (rev. 1993) may be seen as more specific applications. Accordingly, this Article defers to those statutes in the areas that they address.

(e) Relatives by affinity--i.e., by marriage--may be given visitation rights under the second paragraph of this Article under extraordinary circumstances when the court finds it to be in the best interest of the child to do so.

[Notes of Decisions \(252\)](#)

LSA-C.C. Art. 136, LA C.C. Art. 136  
Current through the 2012 Regular Session.

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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 136.1

Art. 136.1. Award of visitation rights

Effective: August 15, 2008

[Currentness](#)

A child has a right to time with both parents. Accordingly, when a court-ordered schedule of visitation, custody, or time to be spent with a child has been entered, a parent shall exercise his rights to the child in accordance with the schedule unless good cause is shown. Neither parent shall interfere with the visitation, custody or time rights of the other unless good cause is shown.

**Credits**

Added by [Acts 2008, No. 671, § 1](#).

LSA-C.C. Art. 136.1, LA C.C. Art. 136.1  
Current through the 2012 Regular Session.

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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 137

Art. 137. Denial of visitation; felony rape; death of a parent

Effective: June 12, 2012

[Currentness](#)

A. In a proceeding in which visitation of a child is being sought by a parent, if the child was conceived through the commission of a felony rape, the parent who committed the felony rape shall be denied visitation rights and contact with the child.

B. In a proceeding in which visitation of a child is being sought by a relative by blood or affinity, if the court determines, by a preponderance of the evidence, that the intentional criminal conduct of the relative resulted in the death of the parent of the child, the relative shall be denied visitation rights and contact with the child.

**Credits**

Added by [Acts 2001, No. 499, § 1](#). Amended by [Acts 2010, No. 873, § 1, eff. July 2, 2010](#); [Acts 2012, No. 763, § 1, eff. June 12, 2012](#).

LSA-C.C. Art. 137, LA C.C. Art. 137  
Current through the 2012 Regular Session.

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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 138

Arts. 138 to 140. [Blank]

Currentness

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS**

<Civil Code Article numbers 138 to 145 were vacated by the amendment and reenactment of Chapters 1 and 2 of Title V of Book I of the Civil Code, formerly comprising Articles 138 through 145, as Chapter 1, comprising Articles 102 through 105, by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

<Acts 1990, Nos. 99, 361, 1008, and 1009 enacted, amended, redesignated, or repealed numerous Civil Code articles relating to marriage dissolution found in Chapter 4 of Title IV of Book I and in Title V of Book I. The remaining articles therein were redesignated by the Louisiana State Law Institute on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10. For disposition of the subject matter of these articles following the 1990 acts and redesignations, see Disposition Table preceding [C.C. art. 101](#).>

<Chapter 1 (C.C. arts. 138, [139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 (C.C. arts. [140](#) to [145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V (C.C. arts. [102](#) to [105](#); “The Divorce Action”) by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

<[Civil Code article 141](#) was amended by Acts 1990, No. 99, § 1. The amended article was effective from September 7, 1990 (the general effective date for the Acts of the 1990 Regular Session) until January 1, 1991 (the special effective date of Acts 1990, No. 1009). See notes preceding [C.C. art. 101](#) and following [C.C. art. 111](#).>

<Acts 1990, No. 99 was repealed by Acts 1991, No. 367, § 4.>

<For history and text of former C.C. arts. 138 to [145](#) of the [1870](#) Civil Code prior to the 1990 revision of Chapters 1 and 2 of Title V of Book I, and for similar provisions in earlier codes, see Vol. 16, LSA-C.C. (Compiled Edition).>

<**Text and annotations for former Civil Code articles 138 to [145](#), relating to separation from bed and board.**>

<Chapter 1 (C.C. arts. 138, [139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 (C.C. arts. [140](#) to [145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V (C.C. arts. [102](#) to [105](#); “The Divorce Action”), effective January 1, 1991, by Acts 1990, No. 1009, § 2. The revision served generally to revise and simplify actions for divorce and to eliminate the action and judgment of separation from bed and board.>

<[R.S. 9:381](#), as enacted by Acts 1990, No. 1009, § 7, provides:>

<“§ 9:381. *Actions pending on effective date of divorce revision act; law governing*>

<“This Act does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1991, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1991.”>

<[R.S. 9:382](#), enacted by Acts 1990, No. 1009, § 7, as amended by Acts 1997, No. 1078, § 3 and Acts 1997, No. 1078, § 3, provides:>

<“§ 9:382. *Present effect of judgment of separation from bed and board*>

<“A judgment of separation from bed and board or divorce rendered before January 1, 1998, or a judgment rendered in an action governed by [R.S. 9:381](#), shall have the same effect that it had prior to January 1, 1998. These effects include but are not limited to:>

<“(1) Spouses who are judicially separated shall retain that status until either reconciliation or divorce.>

<“(2) A judicial determination of fault or freedom from fault made prior to January 1, 1998, shall have the same effect on the right to claim spousal support as it had prior to January 1, 1998.>

<“(3) A judgment of separation or divorce rendered prior to January 1, 1998, without a determination of fault shall not preclude a subsequent adjudication of fault as a bar to spousal support.”>

<The subject matter of former C.C. arts. 138 and [140 to 145](#), all relating to separation from bed and board, was not continued in Chapter 1 of Title V as revised by Acts 1990, No. 1009, § 2. In light of the potential continued applicability of these articles under the transitional provisions of [R.S. 9:381](#) and [9:382](#), the text and annotations for C.C. arts. 138 to [140](#) have been retained below.>

<The subject matter of former [C.C. art. 139](#), relating to divorce, was continued in part in [C.C. arts. 102](#) and [103](#). The text of former [C.C. art. 139](#) and annotations relating to the subject matter of such text not continued in [C.C. arts. 102](#) and [103](#) has been retained below.>

## Annotations Under Former Articles

### ARTICLE 138

#### [Notes of Decisions \(648\)](#)

LSA-C.C. Art. 138, LA C.C. Art. 138  
Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated  
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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 139

Arts. 138 to 140. [Blank]

Currentness

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS**

<Civil Code Article numbers 138 to 145 were vacated by the amendment and reenactment of Chapters 1 and 2 of Title V of Book I of the Civil Code, formerly comprising Articles 138 through 145, as Chapter 1, comprising Articles 102 through 105, by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

<Acts 1990, Nos. 99, 361, 1008, and 1009 enacted, amended, redesignated, or repealed numerous Civil Code articles relating to marriage dissolution found in Chapter 4 of Title IV of Book I and in Title V of Book I. The remaining articles therein were redesignated by the Louisiana State Law Institute on authority of Acts 1990, No. 1008, § 8 and Acts 1990, No. 1009, § 10. For disposition of the subject matter of these articles following the 1990 acts and redesignations, see Disposition Table preceding [C.C. art. 101](#).>

<Chapter 1 ([C.C. arts. 138, 139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 ([C.C. arts. 140 to 145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V ([C.C. arts. 102 to 105](#); “The Divorce Action”) by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

<[Civil Code article 141](#) was amended by Acts 1990, No. 99, § 1. The amended article was effective from September 7, 1990 (the general effective date for the Acts of the 1990 Regular Session) until January 1, 1991 (the special effective date of Acts 1990, No. 1009). See notes preceding [C.C. art. 101](#) and following [C.C. art. 111](#).>

<Acts 1990, No. 99 was repealed by Acts 1991, No. 367, § 4.>

<For history and text of former [C.C. arts. 138 to 145](#) of the 1870 Civil Code prior to the 1990 revision of Chapters 1 and 2 of Title V of Book I, and for similar provisions in earlier codes, see Vol. 16, LSA-C.C. (Compiled Edition).>

<**Text and annotations for former [Civil Code articles 138 to 145](#), relating to separation from bed and board.**>

<Chapter 1 ([C.C. arts. 138, 139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 ([C.C. arts. 140 to 145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V ([C.C. arts. 102 to 105](#); “The Divorce Action”), effective January 1, 1991, by Acts 1990, No. 1009, § 2. The revision served generally to revise and simplify actions for divorce and to eliminate the action and judgment of separation from bed and board.>

<[R.S. 9:381](#), as enacted by Acts 1990, No. 1009, § 7, provides:>

<“§ 9:381. *Actions pending on effective date of divorce revision act; law governing*>

<“This Act does not apply to actions for separation from bed and board or divorce or actions for incidental relief commenced before January 1, 1991, or to reconventional demands thereto, whenever filed. Such actions are to be governed by the law in effect prior to January 1, 1991.”>

<[R.S. 9:382](#), enacted by Acts 1990, No. 1009, § 7, as amended by Acts 1997, No. 1078, § 3 and Acts 1997, No. 1078, § 3, provides:>

<“§ 9:382. *Present effect of judgment of separation from bed and board*>

<“A judgment of separation from bed and board or divorce rendered before January 1, 1998, or a judgment rendered in an action governed by [R.S. 9:381](#), shall have the same effect that it had prior to January 1, 1998. These effects include but are not limited to:>

<“(1) Spouses who are judicially separated shall retain that status until either reconciliation or divorce.>

<“(2) A judicial determination of fault or freedom from fault made prior to January 1, 1998, shall have the same effect on the right to claim spousal support as it had prior to January 1, 1998.>

<“(3) A judgment of separation or divorce rendered prior to January 1, 1998, without a determination of fault shall not preclude a subsequent adjudication of fault as a bar to spousal support.”>

<The subject matter of former [C.C. arts. 138](#) and [140 to 145](#), all relating to separation from bed and board, was not continued in Chapter 1 of Title V as revised by Acts 1990, No. 1009, § 2. In light of the potential continued applicability of these articles under the transitional provisions of [R.S. 9:381](#) and [9:382](#), the text and annotations for [C.C. arts. 138 to 140](#) have been retained below.>

<The subject matter of former C.C. art. 139, relating to divorce, was continued in part in [C.C. arts. 102](#) and [103](#). The text of former C.C. art. 139 and annotations relating to the subject matter of such text not continued in [C.C. arts. 102](#) and [103](#) has been retained below.>

## Annotations Under Former Articles

### ARTICLE 139

#### [Notes of Decisions \(76\)](#)

LSA-C.C. Art. 139, LA C.C. Art. 139  
Current through the 2012 Regular Session.

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Section 3. Child Custody (Refs & Annos)

LSA-C.C. Art. 140

Arts. 138 to 140. [Blank]

Currentness

**Editors' Notes**

**REVISION OF MARRIAGE DISSOLUTION PROVISIONS**

<Civil Code Article numbers 138 to 145 were vacated by the amendment and reenactment of Chapters 1 and 2 of Title V of Book I of the Civil Code, formerly comprising Articles 138 through 145, as Chapter 1, comprising Articles 102 through 105, by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

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<Chapter 1 ([C.C. arts. 138, 139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 ([C.C. arts. 140 to 145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V ([C.C. arts. 102 to 105](#); “The Divorce Action”) by Acts 1990, No. 1009, § 2, effective January 1, 1991.>

<[Civil Code article 141](#) was amended by Acts 1990, No. 99, § 1. The amended article was effective from September 7, 1990 (the general effective date for the Acts of the 1990 Regular Session) until January 1, 1991 (the special effective date of Acts 1990, No. 1009). See notes preceding [C.C. art. 101](#) and following [C.C. art. 111](#).>

<Acts 1990, No. 99 was repealed by Acts 1991, No. 367, § 4.>

<For history and text of former [C.C. arts. 138 to 145](#) of the 1870 Civil Code prior to the 1990 revision of Chapters 1 and 2 of Title V of Book I, and for similar provisions in earlier codes, see Vol. 16, LSA-C.C. (Compiled Edition).>

<**Text and annotations for former [Civil Code articles 138 to 145](#), relating to separation from bed and board.**>

<Chapter 1 ([C.C. arts. 138, 139](#); “Of the Causes of Separation from Bed and Board and of Divorce”) and Chapter 2 ([C.C. arts. 140 to 145](#); “Of the Proceedings of Separation from Bed and Board”) of Title V of Book I of the Civil Code of 1870 were revised as Chapter 1 of Title V ([C.C. arts. 102 to 105](#); “The Divorce Action”), effective January 1, 1991, by Acts 1990, No. 1009, § 2. The revision served generally to revise and simplify actions for divorce and to eliminate the action and judgment of separation from bed and board.>

<R.S. 9:381, as enacted by Acts 1990, No. 1009, § 7, provides:>

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<R.S. 9:382, enacted by Acts 1990, No. 1009, § 7, as amended by Acts 1997, No. 1078, § 3 and Acts 1997, No. 1078, § 3, provides:>

<“§ 9:382. *Present effect of judgment of separation from bed and board*>

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<“(1) Spouses who are judicially separated shall retain that status until either reconciliation or divorce.>

<“(2) A judicial determination of fault or freedom from fault made prior to January 1, 1998, shall have the same effect on the right to claim spousal support as it had prior to January 1, 1998.>

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<The subject matter of former C.C. arts. 138 and 140 to 145, all relating to separation from bed and board, was not continued in Chapter 1 of Title V as revised by Acts 1990, No. 1009, § 2. In light of the potential continued applicability of these articles under the transitional provisions of R.S. 9:381 and 9:382, the text and annotations for C.C. arts. 138 to 140 have been retained below.>

<The subject matter of former C.C. art. 139, relating to divorce, was continued in part in C.C. arts. 102 and 103. The text of former C.C. art. 139 and annotations relating to the subject matter of such text not continued in C.C. arts. 102 and 103 has been retained below.>

LSA-C.C. Art. 140, LA C.C. Art. 140  
Current through the 2012 Regular Session.

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Code Title V. Divorce  
Chapter 1. Divorce  
Part III. Child Custody

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Disp Table  
Currentness

Editors' Notes

REVISION--ACTS 1993, NO. 261

<On recommendation of the Louisiana State Law Institute, Acts 1993, No. 261, § 5 amended and reenacted Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:351 to 356, to comprise Subpart A, R.S. 9:331 to 333, Subpart B, R.S. 9:335 to 337, Subpart C, R.S. 9:341 to 345, and Subpart D, R.S. 9:351 of Part II.>

DISPOSITION TABLE

Showing where the subject matter relative to child custody, visitation, and support could be found following the amendment, reenactment, enactment, repeal, and redesignation by Acts 1993, No. 261.

Former Civil Code Article	New Classification Acts 1993, No. 261
131	
(A).....	C.C. arts. 131, 132, 133
(1).....	C.C. art. 141, R.S. 9:335
(c).....	R.S. 9:337
(B).....	C.C. art. 133
(C)	
(1).....	(none)
(2).....	C.C. art. 134
(D).....	R.S. 9:335, 9:336
(E).....	(none)
(F).....	(none)
(G).....	C.C. art. 135
(H).....	R.S. 9:331

(I).....R.S. 9:332  
 (J).....R.S. 9:351  
 (K).....(none)  
 132.....C.C. art. 136  
 133.....R.S. 9:341  
 134.....C.C. art. 131  
 135.....C.C. art. 141

**Former Revised  
 Statute Section**

**New Revised Statute Section Acts 1993, No. 261**

9:309.....R.S. 9:315.22  
 9:310.....R.S. 9:315.21  
 9:311.....C.C. art. 142  
 9:312.....R.S. 9:342  
 9:313.....R.S. 13:4291  
 9:314.....R.S. 9:315.23  
 9:351.....R.S. 9:332  
 9:353.....R.S. 9:332, 9:333  
 9:354.....R.S. 9:332  
 9:355.....R.S. 9:332  
 9:356.....R.S. 9:332  
 9:376.....R.S. 9:345  
 9:572  
 (A).....R.S. 9:344  
 (B).....(none)  
 (C).....R.S. 9:344  
 (D).....R.S. 9:344  
 9:573.....R.S. 9:343  
 9:574.....(none)

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Disp Table, LA R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Disp Table  
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**Editors' Notes**

**FORMER PROVISIONS**

<Prior Part III of Chapter 1 of Code Title V of Code Book I of Title 9, entitled “Mediation in a Custody or Visitation Proceeding” and comprised of [R.S. 9:351](#) to [9:356](#), was enacted by Acts 1984, No. 788, § 1.>

<An earlier Part III, entitled “Divorce Recognition Law”, derived from Acts 1952, No. 241 and comprised of [R.S. 9:351](#) to [9:354](#), was repealed by Acts 1954, No. 616, § 1.>

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Refs & Annos, LA R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Refs & Annos  
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LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. A, Refs & Annos  
[Currentness](#)

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. A, Refs & Annos, LA R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. A, Refs & Annos  
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Subpart A. Evaluation and Mediation (Refs & Annos)

LSA-R.S. 9:331

§ 331. Custody or visitation proceeding; evaluation by mental health professional

**Currentness**

A. The court may order an evaluation of a party or the child in a custody or visitation proceeding for good cause shown. The evaluation shall be made by a mental health professional selected by the parties or by the court. The court may render judgment for costs of the evaluation, or any part thereof, against any party or parties, as it may consider equitable.

B. The court may order a party or the child to submit to and cooperate in the evaluation, testing, or interview by the mental health professional. The mental health professional shall provide the court and the parties with a written report. The mental health professional shall serve as the witness of the court, subject to cross-examination by a party.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

**Notes of Decisions (17)**

LSA-R.S. 9:331, LA R.S. 9:331

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LSA-R.S. 9:331.1

§ 331.1. Drug testing in custody or visitation proceeding

**Currentness**

The court for good cause shown may, after a contradictory hearing, order a party in a custody or visitation proceeding to submit to specified drug tests and the collection of hair, urine, tissue, and blood samples as required by appropriate testing procedures within a time period set by the court. The refusal to submit to the tests may be taken into consideration by the court. The provisions of [R.S. 9:397.2](#) and 397.3(A), (B), and (C) shall govern the admissibility of the test results. The fact that the court orders a drug test and the results of such test shall be confidential and shall not be admissible in any other proceedings. The court may render judgment for costs of the drug tests against any party or parties, as it may consider equitable.

**Credits**

Added by [Acts 1999, No. 974, § 1](#).

**Notes of Decisions (2)**

LSA-R.S. 9:331.1, LA R.S. 9:331.1

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LSA-R.S. 9:332

§ 332. Custody or visitation proceeding; mediation

**Currentness**

A. The court may order the parties to mediate their differences in a custody or visitation proceeding. The mediator may be agreed upon by the parties or, upon their failure to agree, selected by the court. The court may stay any further determination of custody or visitation for a period not to exceed thirty days from the date of issuance of such an order. The court may order the costs of mediation to be paid in advance by either party or both parties jointly. The court may apportion the costs of the mediation between the parties if agreement is reached on custody or visitation. If mediation concludes without agreement between the parties, the costs of mediation shall be taxed as costs of court. The costs of mediation shall be subject to approval by the court.

B. If an agreement is reached by the parties, the mediator shall prepare a written, signed, and dated agreement. A consent judgment incorporating the agreement shall be submitted to the court for its approval.

C. Evidence of conduct or statements made in mediation is not admissible in any proceeding. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of mediation. Facts disclosed, other than conduct or statements made in mediation, are not inadmissible by virtue of first having been disclosed in mediation.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

**Notes of Decisions (4)**

LSA-R.S. 9:332, LA R.S. 9:332

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Subpart A. Evaluation and Mediation (Refs & Annos)

LSA-R.S. 9:333

§ 333. Duties of mediator

**Currentness**

A. The mediator shall assist the parties in formulating a written, signed, and dated agreement to mediate which shall identify the controversies between the parties, affirm the parties' intent to resolve these controversies through mediation, and specify the circumstances under which the mediation may terminate.

B. The mediator shall advise each of the parties participating in the mediation to obtain review by an attorney of any agreement reached as a result of the mediation prior to signing such an agreement.

C. The mediator shall be impartial and has no power to impose a solution on the parties.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

LSA-R.S. 9:333, LA R.S. 9:333

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Subpart A. Evaluation and Mediation (Refs & Annos)

LSA-R.S. 9:334

§ 334. Mediator qualifications

Effective: August 15, 2008

[Currentness](#)

A. In order to serve as a qualified mediator under the provisions of this Subpart, a person shall meet all of the following criteria:

(1)(a) Possess a four-year college degree and complete a minimum of forty hours of general mediation training and twenty hours of specialized training in the mediation of child custody disputes; or

(b) Possess a four-year college degree and hold a license as an attorney, psychiatrist, psychologist, social worker, marriage and family counselor, professional counselor, or clergyman and complete a minimum of twelve hours of general mediation training and twenty hours of specialized training in the mediation of child custody disputes.

(2) Complete a minimum of eight hours of co-mediation training under the direct supervision of a mediator who is qualified in accordance with the provisions of Paragraph (B)(1) of this Section and who has served a minimum of fifty hours as a dispute mediator.

B. (1) Mediators who prior to August 15, 1997, satisfied the provisions of Paragraph (A)(1) of this Section and served a minimum of fifty hours as a child custody dispute mediator are not required to complete eight hours of co-mediation training in order to serve as a qualified mediator and are qualified to supervise co-mediation training as provided in Paragraph (A)(2) of this Section.

(2) Any person who has served as a Louisiana city, parish, family, juvenile, district, appellate, or supreme court judge for at least ten years, and who is no longer serving as a judge shall be deemed qualified to serve as a mediator if:

(a) The former judge has actually served as a judge in a family court of record or statutory family court for at least three years and completes a minimum of twelve hours of general mediation training; or

(b) The former judge completes at least twenty hours of specialized mediation training in child custody and visitation disputes.

C. The training specified in Paragraph (A)(1) of this Section shall include instruction as to the following:

(1) The Louisiana judicial system and judicial procedure in domestic cases.

(2) Ethical standards, including confidentiality and conflict of interests.

(3) Child development, including the impact of divorce on development.

(4) Family systems theory.

(5) Communication skills.

(6) The mediation process and required document execution.

D. A dispute mediator initially qualified under the provisions of this Subpart shall, in order to remain qualified, complete a minimum of twenty hours of clinical education in dispute mediation every two calendar years.

E. A mediator shall furnish satisfactory evidence of his qualifications upon request.

F. The Louisiana State Bar Association, Alternative Dispute Resolution Section, may promulgate rules and regulations governing dispute mediator registration and qualifications and may establish a fee not to exceed one hundred dollars for registration sufficient to cover associated costs. A person denied listing in the approved register may request a review of that decision by a panel of three members of the Louisiana State Bar Association Alternative Dispute Resolution Section.

G. For the purposes of this Section, an “hour” means a period of at least sixty minutes of actual instruction.

**Credits**

Added by [Acts 1995, No. 287, § 1](#). Amended by [Acts 1997, No. 1144, § 1](#); [Acts 1999, No. 713, § 1, eff. July 1, 1999](#); [Acts 2004, No. 25, § 1](#); [Acts 2006, No. 471, § 1](#); [Acts 2008, No. 631, § 1](#).

LSA-R.S. 9:334, LA R.S. 9:334  
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Subpart B. Joint Custody

LSA-R.S. 9:335

§ 335. Joint custody decree and implementation order

Currentness

A. (1) In a proceeding in which joint custody is decreed, the court shall render a joint custody implementation order except for good cause shown.

(2)(a) The implementation order shall allocate the time periods during which each parent shall have physical custody of the child so that the child is assured of frequent and continuing contact with both parents.

(b) To the extent it is feasible and in the best interest of the child, physical custody of the children should be shared equally.

(3) The implementation order shall allocate the legal authority and responsibility of the parents.

B. (1) In a decree of joint custody the court shall designate a domiciliary parent except when there is an implementation order to the contrary or for other good cause shown.

(2) The domiciliary parent is the parent with whom the child shall primarily reside, but the other parent shall have physical custody during time periods that assure that the child has frequent and continuing contact with both parents.

(3) The domiciliary parent shall have authority to make all decisions affecting the child unless an implementation order provides otherwise. All major decisions made by the domiciliary parent concerning the child shall be subject to review by the court upon motion of the other parent. It shall be presumed that all major decisions made by the domiciliary parent are in the best interest of the child.

C. If a domiciliary parent is not designated in the joint custody decree and an implementation order does not provide otherwise, joint custody confers upon the parents the same rights and responsibilities as are conferred on them by the provisions of Title VII of Book I of the Civil Code.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994. Amended by Acts 1993, No. 905, § 1; Acts 1995, No. 463, § 1.

[Notes of Decisions \(179\)](#)

LSA-R.S. 9:335, LA R.S. 9:335  
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Subpart B. Joint Custody

LSA-R.S. 9:336

§ 336. Obligation of joint custodians to confer

Currentness

Joint custody obligates the parents to exchange information concerning the health, education, and welfare of the child and to confer with one another in exercising decision-making authority.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

Notes of Decisions (1)

LSA-R.S. 9:336, LA R.S. 9:336  
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LSA-R.S. 9:337

§ 337. Repealed by Acts 2001, No. 1082, § 3

Currentness

LSA-R.S. 9:337, LA R.S. 9:337  
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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:341

§ 341. Restriction on visitation

Currentness

A. Whenever the court finds by a preponderance of the evidence that a parent has subjected his or her child to physical abuse, or sexual abuse or exploitation, or has permitted such abuse or exploitation of the child, the court shall prohibit visitation between the abusive parent and the abused child until such parent proves that visitation would not cause physical, emotional, or psychological damage to the child. Should visitation be allowed, the court shall order such restrictions, conditions, and safeguards necessary to minimize any risk of harm to the child. All costs incurred in compliance with the provisions of this Section shall be borne by the abusive parent.

B. When visitation has been prohibited by the court pursuant to Subsection A, and the court subsequently authorizes restricted visitation, the parent whose visitation has been restricted shall not remove the child from the jurisdiction of the court except for good cause shown and with the prior approval of the court.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

Notes of Decisions (14)

LSA-R.S. 9:341, LA R.S. 9:341

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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:342

§ 342. Bond to secure child custody or visitation order

Currentness

For good cause shown, a court may, on its own motion or upon the motion of any party, require the posting of a bond or other security by a party to insure compliance with a child visitation order and to indemnify the other party for the payment of any costs incurred.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

Notes of Decisions (4)

LSA-R.S. 9:342, LA R.S. 9:342  
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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:343

§ 343. Return of child kept in violation of custody and visitation order

Currentness

A. Upon presentation of a certified copy of a custody and visitation rights order rendered by a court of this state, together with the sworn affidavit of the custodial parent, the judge, who shall have jurisdiction for the limited purpose of effectuating the remedy provided by this Section by virtue of either the presence of the child or litigation pending before the court, may issue a civil warrant directed to law enforcement authorities to return the child to the custodial parent pending further order of the court having jurisdiction over the matter.

B. The sworn affidavit of the custodial parent shall include all of the following:

- (1) A statement that the custody and visitation rights order is true and correct.
- (2) A summary of the status of any pending custody proceeding.
- (3) The fact of the removal of or failure to return the child in violation of the custody and visitation rights order.
- (4) A declaration that the custodial parent desires the child returned.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

Notes of Decisions (5)

LSA-R.S. 9:343, LA R.S. 9:343  
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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:344

§ 344. Visitation rights of grandparents and siblings

Effective: June 12, 2012

[Currentness](#)

A. If one of the parties to a marriage dies, is interdicted, or incarcerated, and there is a minor child or children of such marriage, the parents of the deceased, interdicted, or incarcerated party without custody of such minor child or children may have reasonable visitation rights to the child or children of the marriage during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children.

B. When the parents of a minor child or children live in concubinage and one of the parents dies, or is incarcerated, the parents of the deceased or incarcerated party may have reasonable visitation rights to the child or children during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child or children.

C. If one of the parties to a marriage dies or is incarcerated, the siblings of a minor child or children of the marriage may have reasonable visitation rights to such child or children during their minority if the court in its discretion finds that such visitation rights would be in the best interest of the child or children.

D. If the parents of a minor child of the marriage have lived apart for a period of six months, in extraordinary circumstances, the grandparents or siblings of the child may have reasonable visitation rights to the child during his minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child. In determining the best interest of the child the court shall consider the same factors contained in [Civil Code Article 136\(D\)](#). Extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.

**Credits**

[Acts 1993, No. 261, § 5, eff. Jan. 1, 1994](#). Amended by [Acts 1999, No. 1352, § 1](#); [Acts 2012, No. 763, § 2, eff. June 12, 2012](#).

[Notes of Decisions \(43\)](#)

LSA-R.S. 9:344, LA R.S. 9:344

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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:345

§ 345. Appointment of attorney in child custody or visitation proceedings

Currentness

A. In any child custody or visitation proceeding, the court, upon its own motion, upon motion of any parent or party, or upon motion of the child, may appoint an attorney to represent the child if, after a contradictory hearing, the court determines such appointment would be in the best interest of the child. In determining the best interest of the child, the court shall consider:

- (1) Whether the child custody or visitation proceeding is exceptionally intense or protracted.
- (2) Whether an attorney representing the child could provide the court with significant information not otherwise readily available or likely to be presented to the court.
- (3) Whether there exists a possibility that neither parent is capable of providing an adequate and stable environment for the child.
- (4) Whether the interests of the child and those of either parent, or of another party to the proceeding, conflict.
- (5) Any other factor relevant in determining the best interest of the child.

B. The court shall appoint an attorney to represent the child if, in the contradictory hearing, any party presents a prima facie case that a parent or other person caring for the child has sexually, physically, or emotionally abused the child or knew or should have known that the child was being abused.

C. The order appointing an attorney to represent the child shall serve as his enrollment as counsel of record on behalf of the child.

D. Upon appointment as attorney for the child, the attorney shall interview the child, review all relevant records, and conduct discovery as deemed necessary to ascertain facts relevant to the child's custody or visitation.

E. The appointed attorney shall have the right to make any motion and participate in the custody or visitation hearing to the same extent as authorized for either parent.

F. Any costs associated with the appointment of an attorney at law shall be apportioned among the parties as the court deems just, taking into consideration the parties' ability to pay. When the parties' ability to pay is limited, the court shall attempt to secure proper representation without compensation.

**Credits**

[Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.](#)

[Notes of Decisions \(5\)](#)

LSA-R.S. 9:345, LA R.S. 9:345

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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:346

§ 346. Action for failure to exercise or to allow visitation, custody or time rights pursuant to court-ordered schedule; judgment and awards

Effective: June 17, 2010

[Currentness](#)

A. An action for the failure to exercise or to allow child visitation, custody or time rights pursuant to the terms of a court-ordered schedule may be instituted against a parent. The action shall be in the form of a rule to show cause why such parent should not be held in contempt for the failure and why the court should not further render judgment as provided in this Section.

B. If the action is for the failure to exercise child visitation, custody or time rights pursuant to the terms of a court-ordered schedule, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner:

(1) All costs for counseling for the child which may be necessitated by the defendant's failure to exercise visitation, custody or time rights with the child.

(2) A reasonable sum for any actual expenses incurred by the petitioner by reason of the failure of the defendant to exercise rights pursuant to a court-ordered visitation, custody or time schedule.

(3) A reasonable sum for a caretaker of the child, based upon the hourly rate for caretakers in the community.

(4) All attorney fees and costs of the proceeding.

C. If the action is for the failure to allow child custody, visitation, or time rights pursuant to a court-ordered schedule, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner:

(1) A reasonable sum for any actual expenses incurred by the petitioner by the loss of his visitation, custody or time rights.

(2) Additional visitation, custody or time rights with the child equal to the time lost.

(3) All attorney fees and costs of the proceeding.

(4) All costs for counseling for the child which may be necessitated by the defendant's failure to allow visitation, custody, or time rights with the child.

D. The court may award a reasonable penalty to the petitioner against the defendant upon a finding that the failure to allow or exercise visitation, time or custody rights pursuant to the terms of a court-ordered visitation schedule was intended to harass the petitioner.

E. The court may award attorney fees and costs to the defendant if he is the prevailing party, based upon actual expenses incurred.

F. The court may require the prevailing party to submit proof showing the amounts to be awarded pursuant to this Section.

G. It shall be a defense that the failure to allow or exercise child visitation rights pursuant to a court-ordered schedule was by mutual consent, beyond the control of the defendant, or for other good cause shown.

H. A pattern of willful and intentional violation of this Section, without good cause, may be grounds for a modification of a custody or visitation decree.

I. This Section applies to judicial orders involving sole or joint custody.

J. The action authorized by this Section shall be in addition to any other action authorized by law.

#### **Credits**

Added by [Acts 2004, No. 519, § 1](#). Amended by [Acts 2008, No. 671, § 2](#); [Acts 2010, No. 277, § 1](#), eff. June 17, 2010.

#### [Notes of Decisions \(3\)](#)

LSA-R.S. 9:346, LA R.S. 9:346  
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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:347

§ 347. Repealed by Acts 2008, No. 671, § 3

Effective: August 15, 2008

[Currentness](#)

LSA-R.S. 9:347, LA R.S. 9:347  
Current through the 2012 Regular Session.

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Subpart C. Protective and Remedial Provisions

LSA-R.S. 9:348

§ 348. Loss of visitation due to military service; compensatory visitation

Effective: August 15, 2006

[Currentness](#)

A. As used in this Section, “active duty” shall mean a military service member under any of the following conditions:

- (1) A service member on active duty pursuant to an executive order of the president of the United States, an act of the Congress of the United States, presidential recall, or the provisions of [R.S. 29:7](#).
- (2) A service member on orders including but not limited to annual training, active duty special work, or individual duty training.
- (3) A service member on drill status.
- (4) A service member subject to the Uniform Code of Military Justice or the Louisiana Code of Military Justice.

B. (1) When a service member on active duty is unable due to his military obligations to have visitation with a minor child as authorized by a court order, the service member may request a period of compensatory visitation with the child which shall be granted only if the court determines it is in the best interest of the child. Such compensatory visitation shall be negotiated, on a day-for-day basis for each day missed, for the number of compensatory days requested by the service member, not to exceed the total number of days missed. The custodial or domiciliary parent shall negotiate with the service member to develop an equitable schedule for the requested compensatory visitation.

(2)(a) If the parents cannot establish an equitable arrangement for compensatory visitation as required by this Section, the requesting parent may petition the court having jurisdiction to enforce the judicial order for visitation for a temporary alteration to the current visitation order by making an adjustment to require compensatory visitation for visitation days lost as a result of an obligation of active duty. The court may refer the parent to mediation under the provisions of [R.S. 9:332](#).

(b) The court may render judgment for court costs against either party or may apportion such costs between the parties as it may consider equitable.

C. The provisions of this Section shall not apply if either party has a history of physically or sexually abusing a child.

**Credits**

Added by [Acts 2006, No. 110, § 1](#).

LSA-R.S. 9:348, LA R.S. 9:348

Current through the 2012 Regular Session.

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Subpart D. Access to Records

LSA-R.S. 9:351

§ 351. Access to records of child

**Currentness**

Notwithstanding any provision of law to the contrary, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent solely because he is not the child's custodial or domiciliary parent.

**Credits**

Acts 1993, No. 261, § 5, eff. Jan. 1, 1994.

LSA-R.S. 9:351, LA R.S. 9:351  
Current through the 2012 Regular Session.

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Subpart D. Access to Records

LSA-R.S. 9:352

§§ 352 to 355. [Blank]

Currentness

LSA-R.S. 9:352, LA R.S. 9:352  
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LSA-R.S. 9:353

§§ 352 to 355. [Blank]

Currentness

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Subpart D. Access to Records

LSA-R.S. 9:354

§§ 352 to 355. [Blank]

Currentness

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LSA-R.S. 9:355

§§ 352 to 355. [Blank]

Currentness

LSA-R.S. 9:355, LA R.S. 9:355  
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LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E, Refs & Annos  
[Currentness](#)

**Editors' Notes**

**2012 REVISION--ACTS 2012, NO. 627**

<Subpart E, "Relocating a Child's Residence", of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, comprised of [R.S. 9:355.1](#) to [9:355.17](#), was amended and reenacted by Acts 2012, No. 627, § 1 as Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title 9, comprised of [R.S. 9:355.1](#) to [9:355.19](#). The Subpart heading remained unchanged.>

<Section 2 of Act 627 added [R.S. 9:357](#). Section 3 provided a comment for inclusion following [C.C. art. 134](#) and directed the Louisiana State Law Institute to add the comment following that article.>

<Section 4 of Act 627 provides: >

<"Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.">

<The effective date of Act 627 is August 1, 2012. >

<Acts 2012, No. 627 was enacted on recommendation of the Louisiana State Law Institute. >

<For disposition of the subject matter of the former sections of Subpart E, see the Disposition Table, post. >

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E, Refs & Annos, LA R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E, Refs & Annos  
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LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E, Disp Table  
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**DISPOSITION TABLE**

Showing where the subject matter of the former sections of Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950 appears following the 2012 Revision by Acts 2012, No. 627:

<b>Former Sections</b>	<b>2012 Revision</b>
R.S. 9:355.1.....	R.S. 9:355.1, 9:355.2, and 9:355.2, Comment (b)
R.S. 9:355.2.....	R.S. 9:355.2
R.S. 9:355.3.....	R.S. 9:355.4
R.S. 9:355.4.....	R.S. 9:355.5
R.S. 9:355.5.....	R.S. 9:355.11
R.S. 9:355.6.....	R.S. 9:355.6
R.S. 9:355.7 (Repealed).....	None
R.S. 9:355.8.....	R.S. 9:355.15
R.S. 9:355.9.....	R.S. 9:355.13
R.S. 9:355.10.....	R.S. 9:355.12
R.S. 9:355.11.....	R.S. 9:355.17
R.S. 9:355.12.....	R.S. 9:355.14
R.S. 9:355.13.....	R.S. 9:355.10
R.S. 9:355.14.....	R.S. 9:355.18
R.S. 9:355.15.....	R.S. 9:355.16

R.S. 9:355.16..... R.S. 9:355.19

R.S. 9:355.17..... See, R.S. 9:355.13, Comment (b)

LSA-R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E, Disp Table, LA R.S. T. 9, Cdbk. I, Cdtl. V, Ch. 1, Pt. III, Subpt. E,  
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LSA-R.S. 9:355.1  
Formerly cited as LA R.S. 9:355.1

§ 355.1. Definitions

Effective: August 1, 2012  
[Currentness](#)

As used in this Subpart:

(1) "Principal residence of a child" means:

- (a) The location designated by a court to be the primary residence of the child.
- (b) In the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside.
- (c) In the absence of a court order or an express agreement, the location, if any, at which the child has spent the majority of time during the prior six months.

(2) "Relocation" means a change in the principal residence of a child for a period of sixty days or more, but does not include a temporary absence from the principal residence.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<"Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.">

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) This revision moves the geographic threshold for application of the relocation statutes to [R.S. 9:355.2](#).

(b) Absences of more than sixty days which are temporary--including, for instance, a summer holiday--are not relocation as defined in this Subpart.

[Notes of Decisions \(4\)](#)

LSA-R.S. 9:355.1, LA R.S. 9:355.1

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LSA-R.S. 9:355.2  
Formerly cited as LA R.S. 9:355.1; LA R.S. 9:355.2

§ 355.2. Applicability

Effective: August 1, 2012

[Currentness](#)

A. This Subpart shall apply to an order regarding custody of or visitation with a child issued:

- (1) On or after August 15, 1997.
- (2) Before August 15, 1997, if the existing custody order does not expressly govern the relocation of the child.

B. This Subpart shall apply to a proposed relocation when any of the following exist:

- (1) There is intent to establish the principal residence of a child at any location outside the state.
- (2) There is no court order awarding custody and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the domicile of the other parent.
- (3) There is a court order awarding custody and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the principal residence of the child at the time that the most recent custody decree was rendered.
- (4) If either no principal residence of a child has been designated by the court or the parties have equal physical custody, and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the domicile of a person entitled to object to relocation.

C. To the extent that this Subpart conflicts with an existing custody order, this Subpart shall not apply to the terms of that order that govern relocation.

D. This Subpart shall not apply when either of the following circumstances exist:

(1) The persons required to give notice of and the persons entitled to object to a proposed relocation have entered into an express written agreement for the relocation of the principal residence of the child.

(2) There is in effect an order issued pursuant to Domestic Abuse Assistance, [R.S. 46:2131, et seq.](#), Protection from Dating Violence, [R.S. 46:2151](#), Part II of Chapter 28 of Title 46 or the Post-Separation Family Violence Relief Act or Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V of Code Book I of Title 9, except [R.S. 9:372.1](#), all of the Louisiana Revised Statutes of 1950, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code, or any other restraining order, preliminary injunction, permanent injunction, or any protective order prohibiting a person from harming or going near or in the proximity of the other person.

### Credits

[Acts 2012, No. 627, § 1.](#)

### Editors' Notes

#### **APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

#### **COMMENTS--2012 REVISION**

##### **2012 Electronic Pocket Part Update**

(a) This revision reduces the threshold distance for application of the relocation statutes from one hundred fifty miles to seventy-five miles in recognition of the likelihood that weekday visitation and the general ability to participate in the child's daily life will be substantially affected by distances of more than seventy-five miles. The relocation laws of a number of other states hinge upon relocations involving even shorter distances. See, e.g., [Ala. Code 1975 § 30-3-162](#) (60 miles); [Florida Stat. § 61.13001](#) (50 miles); [Maine Rev. Stat. § 1657](#) (60 miles); [Or. Rev. Stat. § 107.159](#) (60 miles).

(b) “Equal physical custody” in Paragraph (4) of Subsection B of this Section refers to a custody arrangement under which persons have equal or approximately equal physical custody. It should be interpreted to mean one-half or an approximately equal amount of time, expressed in percentages such as forty-nine percent/fifty-one percent. “Equal physical custody” is distinguished from “shared custody” under [R.S. 9:315.9](#), which Louisiana courts have interpreted to include custody arrangements with a split of sixty-three percent/thirty-seven percent. See, e.g., [Westcott v. Westcott, 927 So. 2d 377 \(La. App. 1st Cir. 2005\)](#). Such a split is not “equal physical custody” under this statute.

(c) If a person proposes relocation of a child within the state and within distances shorter than those prescribed under Subsection B of this Section, Louisiana's relocation statutes have no application, and the person seeking to relocate has no obligation to provide notice or seek court approval in advance of the move.

(d) Paragraph (3) of Subsection B of this Section changes the focus of the distance threshold from the domicile of the primary custodian at the time that the custody decree was rendered to the principal residence of the child at the time of the custody decree in light of the notion that the body of relocation statutes focuses on a relocation of the child and not his caregivers.

(e) See [R.S. 9:355.7](#) and 355.8 regarding the persons entitled to object to a proposed relocation. Not all persons entitled to notice of a relocation are permitted to object.

(f) The purpose of Paragraph (2) of Subsection D of this Section is to prevent the application of Louisiana's child relocation statutes, requiring the party proposing relocation to notify a person entitled to receive notice of the details of the proposed move, in situations involving family violence, domestic abuse, and the like. The reference to "Part V of Chapter 1 of Code Title V of Code Book I of Title 9," however, includes [R.S. 9:372.1](#), which governs an injunction prohibiting harassment. When an injunction has been issued only under [R.S. 9:372.1](#), there is insufficient justification for exempting the proposed relocation from the requirements of the child relocation statutes.

#### [Notes of Decisions \(5\)](#)

LSA-R.S. 9:355.2, LA R.S. 9:355.2

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LSA-R.S. 9:355.3

§ 355.3. Persons authorized to propose relocation of principal residence of a child

Effective: August 1, 2012

[Currentness](#)

The following persons are authorized to propose relocation of the principal residence of a child by complying with the notice requirements of this Subpart:

- (1) A person designated in a current court decree as the sole custodian.
- (2) A person designated in a current court decree as a domiciliary parent in a joint custody arrangement.
- (3) A person sharing equal physical custody under a current court decree.
- (4) A person sharing equal parental authority under Chapter 5 of Title VII of Book I of the Louisiana Civil Code.
- (5) A person who is the natural tutor of a child born outside of marriage.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) Persons authorized to propose relocation of a child's principal residence are generally those with legal decision-making authority over the child, including the sole custodian or domiciliary parent in a joint custody arrangement or the natural tutor of a child born outside of marriage. When parents are married and sharing equal parental authority, both are entitled to propose relocation. Regardless of who holds decision-making authority for the child, however, persons who share equal physical custody of the child under a court decree are equally authorized to propose relocation.

(b) For the definition of "equal physical custody," see [R.S. 9:355.2](#), Comment (b).

LSA-R.S. 9:355.3, LA R.S. 9:355.3

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LSA-R.S. 9:355.4  
Formerly cited as LA R.S. 9:355.3

§ 355.4 Notice of proposed relocation of child; court authorization to relocate

Effective: August 1, 2012  
Currentness

A. A person proposing relocation of a child's principal residence shall notify any person recognized as a parent and any other person awarded custody or visitation under a court decree as required by [R.S. 9:355.5](#).

B. If multiple persons have equal physical custody of a child under a court decree, the person proposing relocation shall notify the other of a proposed relocation of the principal residence of the child as required by [R.S. 9:355.5](#), and before relocation shall obtain either court authorization to relocate, after a contradictory hearing, or the express written consent of the other person.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) See [R.S. 9:355.3](#) for a list of persons authorized to propose relocation of a child's principal residence.

(b) For the definition of “equal physical custody,” see [R.S. 9:355.2](#), Comment (b).

(c) A “person recognized as a parent” under this provision includes persons who have been recognized by a court as parents in a filiation or avowal action, persons who are presumed to be parents under [Louisiana Civil Code Articles 185](#) or [195](#), and persons who have formally acknowledged a child, as set out in [Louisiana Civil Code Article 196](#), though they have not been judicially recognized as such.

[Notes of Decisions \(3\)](#)

LSA-R.S. 9:355.4, LA R.S. 9:355.4

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LSA-R.S. 9:355.5  
Formerly cited as LA R.S. 9:355.4

§ 355.5 Mailing notice of proposed relocation address

Effective: August 1, 2012  
Currentness

A. Notice of a proposed relocation of the principal residence of a child shall be given by registered or certified mail, return receipt requested, or delivered by commercial courier as defined in [R.S. 13:3204\(D\)](#), to the last known address of the person entitled to notice under [R.S. 9:355.4](#) no later than any of the following:

- (1) The sixtieth day before the date of the proposed relocation.
- (2) The tenth day after the date that the person proposing relocation knows the information required to be furnished by Subsection B of this Section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

B. The following information shall be included with the notice of intended relocation of the child:

- (1) The current mailing address of the person proposing relocation.
- (2) The intended new residence, including the specific physical address, if known.
- (3) The intended new mailing address, if not the same.
- (4) The home and cellular telephone numbers of the person proposing relocation, if known.
- (5) The date of the proposed relocation.
- (6) A brief statement of the specific reasons for the proposed relocation of a child.

(7) A proposal for a revised schedule of physical custody or visitation with the child.

(8) A statement that the person entitled to object shall make any objection to the proposed relocation in writing by registered or certified mail, return receipt requested, within thirty days of receipt of the notice and should seek legal advice immediately.

C. A person required to give notice of a proposed relocation shall have a continuing duty to provide the information required by this Section as that information becomes known.

#### **Credits**

[Acts 2012, No. 627, § 1.](#)

#### **Editors' Notes**

#### **APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

#### **COMMENT--2012 REVISION**

#### **2012 Electronic Pocket Part Update**

The proposal for a revised custody and visitation schedule described in Paragraph (7) of Subsection B of this Section has no legal effect. Any existing custody or visitation order remains in effect unless and until a court orders a modification of custody or visitation. The intent, however, is to require the person proposing relocation to consider and describe in writing how all persons entitled to custody or visitation under an existing order may continue to maintain their relationship with the child after the proposed relocation.

#### [Notes of Decisions \(4\)](#)

LSA-R.S. 9:355.5, LA R.S. 9:355.5

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LSA-R.S. 9:355.6

§ 355.6. Failure to give notice of relocation

Effective: August 1, 2012

[Currentness](#)

The court may consider a failure to provide notice of a proposed relocation of a child as:

- (1) A factor in making its determination regarding the relocation of a child.
- (2) A basis for ordering the return of the child if the relocation has taken place without notice or court authorization.
- (3) Sufficient cause to order the person proposing relocation to pay reasonable expenses incurred by the person objecting to the relocation.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

[Notes of Decisions \(1\)](#)

LSA-R.S. 9:355.6, LA R.S. 9:355.6

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LSA-R.S. 9:355.7

§ 355.7. Objection to relocation of child

Effective: August 1, 2012

[Currentness](#)

Except for a person with equal physical custody of a child under a court decree, a person who is entitled to object to a proposed relocation of the principal residence of a child shall make any objection within thirty days after receipt of the notice. The objection shall be made in writing by registered or certified mail, return receipt requested, or delivered by commercial courier as defined in [R.S. 13:3204\(D\)](#), to the mailing address provided for the person proposing relocation in the notice of proposed relocation.

A person with equal physical custody of a child under a court decree need not make an objection under this Section. The rights of persons with equal physical custody are governed by [R.S. 9:355.4\(B\)](#).

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) The objection procedure described in this Section is subject to the limitations described in [R.S. 9:355.8](#). Some persons entitled to receive notice of a proposed relocation of a child's residence are not permitted to object to the proposed relocation.

(b) A person who is entitled to object to a proposed relocation but chooses not to do so may nonetheless commence an action to change legal or physical custody or the visitation schedule in light of the changed circumstances of the relocation.

(c) In the absence of timely objection, retaining an attorney to handle an objection to relocation is not sufficient to require the person proposing relocation to initiate a proceeding.

(d) For the definition of “equal physical custody,” see [R.S. 9:355.2](#), Comment (b).

LSA-R.S. 9:355.7, LA R.S. 9:355.7

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LSA-R.S. 9:355.8

§ 355.8. Limitation on objection by non-parents

Effective: August 1, 2012

[Currentness](#)

A non-parent may object to the relocation only if he has been awarded custody. A non-parent who has been awarded visitation may initiate a proceeding to obtain a revised visitation schedule.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) This Section recognizes the primacy of parental rights over non-parent rights regarding relocation of a child. See generally *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed. 49 (2000) (holding that Washington's non-parent visitation statute violated mother's fundamental right to raise her children as she saw fit). Although a non-parent who has not been awarded custody may be entitled to notice of a proposed relocation and may not object to a relocation, the non-parent may, if granted visitation, commence an action to revise the visitation schedule in light of the changed circumstances of the relocation.

(b) This provision governs objections by non-parents only. It does not limit the right of a parent to object to a proposed relocation.

LSA-R.S. 9:355.8, LA R.S. 9:355.8  
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LSA-R.S. 9:355.9

§ 355.9. Effect of objection or failure to object to notice of proposed relocation

Effective: August 1, 2012

[Currentness](#)

Except as otherwise provided by [R.S. 9:355.4\(B\)](#), the person required to give notice may relocate the principal residence of a child after providing the required notice unless a person entitled to object does so in compliance with [R.S. 9:355.7](#).

If a written objection is sent in compliance with [R.S. 9:355.7](#), the person proposing relocation of the principal residence of the child shall initiate within thirty days after receiving the objection a summary proceeding to obtain court approval to relocate. Court approval to relocate shall be granted only after a contradictory hearing.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENT--2012 REVISION**

**2012 Electronic Pocket Part Update**

If, at any time, the person proposing relocation and those entitled to object enter into the express written agreement on relocation described in [R. S. 9:355.2\(D\)](#), no summary proceeding or court approval to relocate is necessary. The relocation statutes do not apply to restrict moves for which the parties agree. [R.S. 9:355.2\(D\)](#).

LSA-R.S. 9:355.9, LA R.S. 9:355.9  
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LSA-R.S. 9:355.10  
Formerly cited as LA R.S. 9:355.13

§ 355.10 Burden of proof

Effective: August 1, 2012  
[Currentness](#)

The person proposing relocation has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) Although the person proposing relocation has the burden to prove that the relocation attempt is made both in good faith and in the best interest of the child, there is no presumption in favor of or against relocation of the child's residence. This Section places the burden of proof on the person proposing relocation. If an objection to the relocation is made in accordance with [R.S. 9:355.7](#), the person wishing to relocate must prove by a preponderance of the evidence, on contradictory hearing, that relocation meets the good faith and best interest standards.

(b) This revision eliminates reference to the court's consideration of an enhancement in the quality of life of the person seeking relocation in determining the best interest of the child. It does not, however, change the law. A detailed list of

factors to be considered in determining whether relocation is in the best interest of the child is set out in [R.S. 9:355.14](#), and among them is a consideration of “how the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit or education opportunity.”

[Notes of Decisions \(58\)](#)

LSA-R.S. 9:355.10, LA R.S. 9:355.10

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Subpart E. Relocating a Child's Residence (Refs & Annos)

LSA-R.S. 9:355.11  
Formerly cited as LA R.S. 9:355.5

§ 355.11 Court authorization to relocate

Effective: August 1, 2012  
[Currentness](#)

If timely objection to a proposed relocation is made by a person entitled to object, the person proposing relocation shall not, absent express written consent of the objecting person, relocate the child pending resolution of the dispute by final order of the court, unless the person proposing relocation obtains a temporary order pursuant to [R.S. 9:355.12](#).

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

[Notes of Decisions \(3\)](#)

LSA-R.S. 9:355.11, LA R.S. 9:355.11  
Current through the 2012 Regular Session.

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Subpart E. Relocating a Child's Residence (Refs & Annos)

LSA-R.S. 9:355.12  
Formerly cited as LA R.S. 9:355.10

§ 355.12 Temporary order

Effective: August 1, 2012  
[Currentness](#)

- A. The court may grant a temporary order allowing relocation.
- B. The court, upon the request of the moving party, may hold an expedited preliminary hearing on the proposed relocation but shall not grant authorization to relocate the child on an ex parte basis.
- C. If the court issues a temporary order authorizing relocation, the court shall not give undue weight to the temporary relocation as a factor in reaching its final determination.
- D. If temporary relocation of a child is permitted, the court may require the person relocating the child to provide reasonable security guaranteeing that the court-ordered physical custody or visitation with the child will not be interrupted or interfered with or that the relocating person will return the child if court authorization for the relocation is denied at trial.
- E. An order not in compliance with the provisions of this Section is not enforceable and is null and void.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENT--2012 REVISION**

**2012 Electronic Pocket Part Update**

Subsection (E) of this Section tracks the language of [C.C.P. Art. 3945\(E\)](#), which makes temporary custody orders unenforceable and null and void if not issued in compliance.

[Notes of Decisions \(4\)](#)

LSA-R.S. 9:355.12, LA R.S. 9:355.12

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LSA-R.S. 9:355.13  
Formerly cited as LA R.S. 9:355.9

§ 355.13 Priority for trial

Effective: August 1, 2012

[Currentness](#)

A trial on the proposed relocation shall be assigned within sixty days after the filing of the motion to obtain court approval to relocate.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) The trial referenced here is the final hearing on the merits of the relocation; it is to be distinguished from a preliminary hearing on relocation, described in [R.S. 9:355.12](#).

(b) After entry of an order on relocation, a Louisiana court may retain jurisdiction consistent with Louisiana law and the Uniform Child Custody Jurisdiction and Enforcement Act. ([R.S. 13:1814](#)).

[Notes of Decisions \(1\)](#)

LSA-R.S. 9:355.13, LA R.S. 9:355.13  
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Subpart E. Relocating a Child's Residence (Refs & Annos)

LSA-R.S. 9:355.14  
Formerly cited as LA R.S. 9:355.12

§ 355.14 Factors to determine contested relocation

Effective: August 1, 2012

[Currentness](#)

A. In reaching its decision regarding a proposed relocation, the court shall consider all relevant factors in determining whether relocation is in the best interest of the child, including the following:

- (1) The nature, quality, extent of involvement, and duration of the relationship of the child with the person proposing relocation and with the non-relocating person, siblings, and other significant persons in the child's life.
- (2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development.
- (3) The feasibility of preserving a good relationship between the non-relocating person and the child through suitable physical custody or visitation arrangements, considering the logistics and financial circumstances of the parties.
- (4) The child's views about the proposed relocation, taking into consideration the age and maturity of the child.
- (5) Whether there is an established pattern of conduct by either the person seeking or the person opposing the relocation, either to promote or thwart the relationship of the child and the other party.
- (6) How the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit and educational opportunity.
- (7) The reasons of each person for seeking or opposing the relocation.
- (8) The current employment and economic circumstances of each person and how the proposed relocation may affect the circumstances of the child.

(9) The extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation, including child support, spousal support, and community property, and alimentary obligations.

(10) The feasibility of a relocation by the objecting person.

(11) Any history of substance abuse, harassment, or violence by either the person seeking or the person opposing relocation, including a consideration of the severity of the conduct and the failure or success of any attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

B. The court may not consider whether the person seeking relocation of the child may relocate without the child if relocation is denied or whether the person opposing relocation may also relocate if relocation is allowed.

#### Credits

[Acts 2012, No. 627, § 1.](#)

#### Editors' Notes

#### **APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

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<The effective date of Act 627 is August 1, 2012. >

#### **COMMENTS--2012 REVISION**

#### **2012 Electronic Pocket Part Update**

(a) This revision changes the opening language of the statute to make it clear that, as in cases requiring the application of the factors of [Civil Code Article 134](#), a court need not make a factual finding on every factor.

(b) In considering the needs of the child and the developmental impact of relocation, the court may take into account not only the general needs of similarly situated children, but also any special needs of the particular child under consideration.

(c) The “logistics” referred to in Paragraph (3) of Subsection A of this Section may include a consideration of the amount of time the child will be required to spend traveling in order to maintain a meaningful relationship with the person objecting to the relocation, the distance involved, and the proximity, availability, and safety of travel arrangements.

(d) A consideration of the child's "preference" is a traditional factor in cases involving custody. The word "views" is used here in order to broaden the inquiry and to decrease the potentially harmful impact of asking a child to choose in a relocation contest.

(e) Because the focus of the best interest inquiry in relocation is on the child, references to improvements in the custodial parent's quality of life and the necessity of improving the circumstances of a parent in Paragraphs (6) and (8) of Subsection A of this Section have been eliminated. A child may benefit or suffer detriment either directly or indirectly from a change in the quality of life or economic circumstances of any person exercising custody or visitation with him, and such benefits and detriments are to be considered by the court. The assessment must focus on the effect of relocation on the child, however, and not the benefit that relocation will provide to the adults exercising custody or visitation rights.

(f) The promotion of or interference with the relationship between the child and the other parent described in Paragraphs (3) and (5) of Subsection A of this Section may include a parent's willingness to make travel arrangements that allow the child meaningful time with both parents and that minimize the negative impact of long-distance parenting on the child.

(g) Paragraph (7) of Subsection A of this Section may lead to a consideration of the mental and emotional well-being of both the person seeking relocation and the person opposing it. The substantial mental and emotional toll of custody proceedings should be considered in the relocation context, just as it is in [Civil Code Article 134](#), on factors affecting the best interest of the child in custody disputes in general.

#### [Notes of Decisions \(91\)](#)

LSA-R.S. 9:355.14, LA R.S. 9:355.14  
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Subpart E. Relocating a Child's Residence (Refs & Annos)

LSA-R.S. 9:355.15  
Formerly cited as LA R.S. 9:355.8

§ 355.15 Mental health expert; appointment

Effective: August 1, 2012  
[Currentness](#)

The court, on motion of either party or on its own motion, may appoint an independent mental health expert to render a report to assist the court in determining the best interest of the child.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

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<The effective date of Act 627 is August 1, 2012. >

[Notes of Decisions \(5\)](#)

LSA-R.S. 9:355.15, LA R.S. 9:355.15  
Current through the 2012 Regular Session.

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LSA-R.S. 9:355.16  
Formerly cited as LA R.S. 9:355.15

§ 355.16 Application of factors at initial hearing

Effective: August 1, 2012  
[Currentness](#)

If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall consider also the factors set forth in [R.S. 9:355.14](#) in making its initial determination.

#### Credits

[Acts 2012, No. 627, § 1.](#)

#### Editors' Notes

##### **APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

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<The effective date of Act 627 is August 1, 2012. >

##### **COMMENT--2012 REVISION**

##### **2012 Electronic Pocket Part Update**

In an initial custody determination, the court will generally consider the factors concerning best interest of the child set out in [Civil Code Article 134](#). This statute requires the court to consider application of the relevant factors specific to relocation in [R.S. 9:355.14](#) as well as the [Article 134](#) factors. Dicta in [McLain v. McLain, 974 So.2d 726, 733 \(La. App. 4th Cir. 2007\)](#), stating that the [Article 134](#) factors are “arguably not applicable” when relocation is at issue in the initial custody hearing, are no longer accurate under this revision.

LSA-R.S. 9:355.16, LA R.S. 9:355.16

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LSA-R.S. 9:355.17  
Formerly cited as LA R.S. 9:355.11

§ 355.17 Modification of custody

Effective: August 1, 2012  
[Currentness](#)

Providing notice of a proposed relocation does not constitute a change of circumstance warranting a change of custody. Relocating without prior notice if there is a court order awarding custody or relocating in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Any change in the principal residence of a child, including one not meeting the threshold distance set out in [R.S. 9:355.2](#), may constitute a change of circumstances warranting a modification of custody.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

**COMMENTS--2012 REVISION**

**2012 Electronic Pocket Part Update**

(a) In accordance with [R.S. 9:355.8](#), not all persons receiving notice of a proposed relocation are entitled to object. Moving without prior notice or in violation of a court order may constitute a change of circumstances warranting a modification of custody, but only in a contest between a person proposing relocation and a person entitled to object to the proposed relocation.

(b) The second paragraph of this Article clarifies that even a move of less than seventy-five miles may warrant a change of custody. Although such a move would not be sufficient to trigger the protection of the relocation statutes, courts have discretion to modify the current custodial arrangement after any move that makes an existing custody order unfeasible.

[Notes of Decisions \(8\)](#)

LSA-R.S. 9:355.17, LA R.S. 9:355.17

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LSA-R.S. 9:355.18  
Formerly cited as LA R.S. 9:355.14

§ 355.18 Posting security

Effective: August 1, 2012

[Currentness](#)

If relocation of a child is permitted, the court may require the person relocating the child to provide reasonable security guaranteeing that the court-ordered physical custody or visitation with the child will not be interrupted or interfered with by the relocating party.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

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<The effective date of Act 627 is August 1, 2012. >

LSA-R.S. 9:355.18, LA R.S. 9:355.18  
Current through the 2012 Regular Session.

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LSA-R.S. 9:355.19  
Formerly cited as LA R.S. 9:355.16

§ 355.19 Sanctions for unwarranted or frivolous proposal to relocate child or objection to relocation

Effective: August 1, 2012  
[Currentness](#)

A. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing or objecting to a proposed relocation of a child if it determines that the proposal or objection was made:

- (1) For the purpose of harassing the other person or causing unnecessary delay or needless increase in the cost of litigation.
- (2) Without a basis in existing law or on the basis of a frivolous argument.
- (3) In violation of [Code of Civil Procedure Article 863\(B\)](#).

B. A sanction imposed under this Section shall be limited to what is sufficient to deter repetition of such conduct. The sanction may consist of reasonable expenses and attorney fees incurred as a direct result of the conduct.

**Credits**

[Acts 2012, No. 627, § 1.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

[Notes of Decisions \(3\)](#)

LSA-R.S. 9:355.19, LA R.S. 9:355.19

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LSA-R.S. 9:356

§ 356. Consideration of child support

Currentness

In any proceeding for child custody or visitation, either party may raise any issue relating to child support and the court may hear and determine that issue if all parties consent. The child support matters need not be specifically pleaded for the party to raise the issue, or the court to decide the issue.

**Credits**

Added by [Acts 1999, No. 447, § 1](#).

LSA-R.S. 9:356, LA R.S. 9:356  
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LSA-R.S. 9:357

§ 357. Use of technology

Effective: August 1, 2012

[Currentness](#)

The court shall consider ordering persons awarded custody or visitation to use technology, including video calling, telephone, text messaging, Internet communications, or other forms of technology, to facilitate communication with the child when it is in the best interest of the child.

**Credits**

Added by [Acts 2012, No. 627, § 2.](#)

**Editors' Notes**

**APPLICATION; EFFECTIVE DATE--ACTS 2012, NO. 627**

<Section 4 of Acts 2012, No. 627 provides:>

<“Section 4. This Act shall not apply to any litigation pending on the effective date of this Act regarding the relocation of the principal residence of a child, but shall apply to any subsequent relocation after final disposition of that litigation.”>

<The effective date of Act 627 is August 1, 2012. >

LSA-R.S. 9:357, LA R.S. 9:357  
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Subpart G. Parenting Coordinator

LSA-R.S. 9:358.1

§ 358.1. Appointment of parenting coordinator; term; costs

Effective: August 15, 2007

[Currentness](#)

A. On motion of a party or on its own motion, the court may appoint a parenting coordinator in a child custody case for good cause shown if the court has previously entered a judgment establishing child custody, other than an ex parte order. The court shall make the appointment on joint motion of the parties.

B. The initial term of the appointment of the parenting coordinator shall not exceed one year. For good cause shown, the court may extend the appointment of the parenting coordinator for additional one year terms.

C. The court shall order each party to pay a portion of the costs of the parenting coordinator. No parenting coordinator shall be appointed by the court if a party has been granted pauper status or is unable to pay his apportioned cost of the parenting coordinator.

**Credits**

Added by [Acts 2007, No. 265, § 2](#).

**Editors' Notes**

**COMMENTS--2007**

(a) Parenting coordination is a child-focused alternate dispute resolution process in which a duly qualified parenting coordinator assists parents or persons exercising parental authority to implement a parenting plan by facilitating the resolution of their disputes in a timely manner and by reducing their child-related conflict so that the children may be protected from the impact of that conflict. The parenting coordinator assists the parties in promoting the best interests of the children by reducing or eliminating child-related conflict through the use of the parenting coordination process.

(b) The court may appoint a parenting coordinator only if there is an existing child custody order. The custody order may be a “considered decree” or an order based on a joint stipulation; however the appointment may not follow an ex-parte custody order. The purpose of this limitation is to prevent the court from using the parenting coordinator process as a means of abdicating its responsibility to make the initial custody determination. The parenting coordinator may not make suggestions that would affect the existing custody arrangement. See [R.S. 9:358.4\(B\)](#). This provision follows the approach taken in [Idaho Code 32-717D](#).

(c) The court may appoint a parenting coordinator on its own motion or on motion of a party only upon a showing of “good cause shown.” “Good cause” includes a determination by the court that either or both parties have demonstrated an inability or unwillingness to collaboratively make parenting decisions without assistance of others or insistence of the court. “Good cause” may also include an inability or unwillingness to comply with parenting agreements and orders or a determination by the court that either or both parties have demonstrated an ongoing pattern of unnecessary litigation, refusal to communicate or difficulty in communicating about and cooperation in the care of the children, and refusal to acknowledge the right of each party to have and maintain a continuing relationship with the children.

(d) This Section requires the court to appoint a parenting coordinator if both parties agree. No showing of good cause is required.

(e) The order of appointment must set the term of the parenting coordinator at no more than one year. At the end of the term the court may extend the appointment for good cause shown. The appointment of the parenting coordinator may be terminated as provided in [R.S. 9:358.8](#).

(f) This Section requires that each party must pay some portion of the fee but allows the court to apportion the fee according to the parties' ability to pay. The court may order a particularly obstinate party to pay a larger portion of the fee. The portion of the costs that each party is to pay should be specified in the order of appointment and the court should state its reasons on the record in the event of an appeal. Under normal circumstances each party would pay the costs of his time with the parenting coordinator and would split the cost of other times.

#### [Notes of Decisions \(6\)](#)

LSA-R.S. 9:358.1, LA R.S. 9:358.1

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LSA-R.S. 9:358.2

§ 358.2. No appointment in family violence cases

Effective: August 15, 2007

[Currentness](#)

Unless good cause is shown, the court shall not appoint a parenting coordinator if it finds that a party has a history of perpetrating family violence.

**Credits**

Added by [Acts 2007, No. 265, § 2.](#)

**Editors' Notes**

**COMMENTS--2007**

(a) The Section follows the policy of this state as set forth in the Post-Separation Family Violence Relief Act, which prohibits mediation in cases when there is family violence. [R.S. 9:361 et seq.](#) The term “family violence” as used here has the same meaning as that in [R.S. 9:362\(3\)](#). Under that Section, a parent who has a history of perpetrating family violence may only be allowed supervised visitation conditioned on the parent's completing a treatment program. After completion of the treatment program the parent may petition the court for unsupervised visitation.

(b) A parenting coordinator is required to have training on the effects of domestic violence on children and families. [R.S. 9:358.3\(B\)\(8\)](#). If a parenting coordinator determines that a party is guilty of domestic violence, he should immediately file a report of his findings. A parenting coordinator is a mandatory reporter of child abuse. See [Children's Code Art. 603\(13\)\(h\)](#) and [Arts. 609-610](#).

LSA-R.S. 9:358.2, LA R.S. 9:358.2

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LSA-R.S. 9:358.3

§ 358.3. Qualifications

Effective: August 15, 2007

[Currentness](#)

A. A person appointed as a parenting coordinator shall meet all of the following qualifications:

(1) Possess a master's, Ph.D., or equivalent degree, in a mental health field, such as psychiatry, psychology, social work, marriage and family counseling, or professional counseling, hold a Louisiana license in the mental health profession, and have no less than three years of related professional post-degree experience.

(2) Be qualified as a mediator under [R.S. 9:334](#).

(3) Complete a minimum of forty hours of specialized training on parent coordination. A maximum of fourteen hours of family mediation training may be used towards the total forty hours.

B. The training specified in Paragraph (A)(3) of this Section shall include instruction on all of the following:

(1) The Louisiana judicial system and judicial procedure in domestic cases.

(2) Ethical standards, including confidentiality and conflicts of interest.

(3) Child development, including the impact of divorce on development.

(4) Parenting techniques.

(5) Parenting plans and time schedules.

(6) Family systems theory.

(7) Communication skills.

(8) Domestic violence and its effects on children and families.

(9) The parenting coordination process and required documentation execution.

C. In order to remain qualified, a parenting coordinator shall complete, every two calendar years, a minimum of twenty hours of continuing education in parenting coordination.

D. A court may accept the initial certification of a parenting coordinator or the maintenance of that certification made by a legal or mental health association whose focus includes resolution of child-related conflicts.

E. Upon request of the court, a parenting coordinator shall furnish satisfactory evidence of his qualifications.

#### **Credits**

Added by [Acts 2007, No. 265, § 2](#).

#### **Editors' Notes**

#### **COMMENTS--2007**

Paragraph (A)(1) of this Section allows two categories of persons to qualify as a parenting coordinator: attorneys and mental health care professionals. The list of health care professionals tracks the qualifications required for mediators, but does not include clergymen. In addition, those persons must be qualified as mediators and have an additional forty hours of specialized training.

LSA-R.S. 9:358.3, LA R.S. 9:358.3

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LSA-R.S. 9:358.4

§ 358.4. Authority and duties of parenting coordinator

Effective: August 15, 2007

[Currentness](#)

A. A parenting coordinator shall assist the parties in resolving disputes and in reaching agreements regarding children in their care including, but not limited to, the following types of issues:

- (1) Minor changes or clarifications of access schedules from the existing custody plan.
- (2) Exchanges of the children including date, time, place, means of transportation, and the transporter.
- (3) Health care management including medical, dental, orthodontic, and vision care.
- (4) Child-rearing issues.
- (5) Psychotherapy or other mental health care including substance abuse or mental health assessment or counseling for the children.
- (6) Psychological testing or other assessments of the children.
- (7) Education or daycare including school choice, tutoring, summer school, participation in special education testing and programs, or other educational decisions.
- (8) Enrichment and extracurricular activities including camps and jobs.
- (9) Religious observances and education.
- (10) Children's travel and passport arrangements.

- (11) Clothing, equipment, and personal possessions of the children.
- (12) Communication between the parties about the children.
- (13) Means of communication by a party with the children when they are not in that party's care.
- (14) Alteration of appearance of the children including hairstyle and ear and body piercing.
- (15) Role of and contact with significant others and extended families.
- (16) Substance abuse assessment or testing of either or both parties or the child, including access to results.
- (17) Parenting classes or referral for other services of either or both parties.

B. A parenting coordinator shall:

- (1) Refrain from facilitating an agreement by the parties that would change legal custody from one party to the other or that would change the physical custody or visitation schedule in a way that may result in a change in child support.
- (2) Notify the court of a conflict of interest of the parenting coordinator.
- (3) Prepare interim and final reports as ordered by the court and other reports when necessary.

C. When the parties are unable to reach an agreement, the parenting coordinator may make a recommendation in a report to the court for resolution of the dispute.

#### **Credits**

Added by [Acts 2007, No. 265, § 2](#).

#### **Editors' Notes**

#### **COMMENTS--2007**

The purpose of the parenting coordinator process is to assist the parties in implementing a parenting plan by facilitating the resolution of their disputes and by reducing their child-related conflicts so that the children may be protected from the impact of that conflict. The parenting coordinator may not attempt to help the parties reach an agreement that changes the basic child custody and child support orders. If the parties reach an agreement on other matters, the parenting coordinator may state the substance of the agreement in a report to the court and the lawyers; however, it remains the responsibility of the parties' attorneys to prepare a written agreement and incorporate it into a judgment.

LSA-R.S. 9:358.4, LA R.S. 9:358.4  
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LSA-R.S. 9:358.5

§ 358.5. Testimony and report

Effective: August 15, 2007

[Currentness](#)

- A. The parenting coordinator shall not be called as a witness in the child custody proceeding without prior court approval.
- B. The parenting coordinator shall distribute all reports to the court, the parties, and their attorneys.

**Credits**

Added by [Acts 2007, No. 265, § 2.](#)

**Editors' Notes**

**COMMENTS--2007**

(a) Paragraph A allows the parties to call the parenting coordinator as a witness only with permission of the court. The approval of a parenting coordinator to be a witness does not require a contradictory hearing. Compare [Evidence Code Article 507](#) which requires court approval and a hearing before a lawyer may be called as a witness in a criminal case. A judge should not authorize the issuance of a subpoena to a parenting coordinator unless the calling party demonstrates a need for the testimony and that the evidence cannot be adduced from other sources. The court may not call the parenting coordinator as a witness on its own motion. See [C.E. Art. 614](#).

(b) The report of the parenting coordinator is inadmissible hearsay under the general rules of evidence if offered for the truth of the matters asserted. See [C.E. Art. 801](#). However, evidence rules are relaxed in custody cases and the judge has some authority to admit hearsay. See [C.E. Art. 1101\(B\)\(2\)](#). If the court does admit the report into evidence it should allow the parenting coordinator to be called as a witness and to be subject to cross-examination. See generally, Triche, Handbook on Louisiana Family Law, Rules of Evidence in Family Court (Thomson-West 2007).

(c) There is no confidentiality provision for statements made to the parenting coordinator, unlike the mediation statute. See [R.S. 9:332\(C\)](#). Statements by a party may be admissible as an admission of a party opponent under [Evidence Code Article 801\(D\)\(2\)](#).

LSA-R.S. 9:358.5, LA R.S. 9:358.5  
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LSA-R.S. 9:358.6

§ 358.6. Communication with court

Effective: August 15, 2007

[Currentness](#)

The parenting coordinator shall not communicate ex parte with the court, except in an emergency situation.

**Credits**

Added by [Acts 2007, No. 265, § 2](#).

LSA-R.S. 9:358.6, LA R.S. 9:358.6

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LSA-R.S. 9:358.7

§ 358.7. Access to information

Effective: August 15, 2007

[Currentness](#)

The court shall order the parties to cooperate with the parenting coordinator and to provide relevant non-privileged records and information requested by the parenting coordinator. The parenting coordinator may communicate with the child and other persons not a party to the litigation.

**Credits**

Added by [Acts 2007, No. 265, § 2.](#)

**Editors' Notes**

**COMMENTS--2007**

(a) This Section authorizes the parenting coordinator to communicate to third persons. Access to such persons, such as a grandparent or teacher, or to documents should be arranged through a cooperative party. If persons not a party to the litigation are not willing to speak to the parenting coordinator, the parenting coordinator may arrange a status conference with the court and the parties to determine whether the court should issue a subpoena.

(b) The pleadings filed in the proceeding are public records and thus accessible to the parenting coordinator. The court may release to the parenting coordinator other information about the case, such as mediator or health professional reports.

(c) The order of appointment should order the parties to cooperate with the parenting coordinator and supply the parenting coordinator with relevant non-privileged information. If a party objects to the release of information he deems confidential or irrelevant, he should file an objection with the court. All communications subject to the attorney-client privilege are exempt from disclosure. The health care provider privilege generally does not cover communications relating to the health condition of a party to a child custody case when that information has a substantial bearing on the fitness of the party. See [C.E. Art. 510\(B\)\(2\)\(d\)](#). The spousal privilege does not apply in child custody cases. See [C.E. Art. 504\(C\)\(2\) and \(4\)](#) and comment (d). Statements made by the parties to the parenting coordinator are not confidential. Whether the parenting coordinator may have access to information that might not be admissible in the custody case because of relevancy is left to the discretion of the judge.

LSA-R.S. 9:358.7, LA R.S. 9:358.7

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LSA-R.S. 9:358.8

§ 358.8. Termination of appointment of parenting coordinator

Effective: August 15, 2007

[Currentness](#)

For good cause shown, the court, on its own motion, on motion of a party, or upon request of the parenting coordinator, may terminate the appointment of the parenting coordinator.

**Credits**

Added by [Acts 2007, No. 265, § 2.](#)

**Editors' Notes**

**COMMENTS--2007**

This Section allows the court, a party, or the parenting coordinator to request termination of the appointment. “Good cause” for terminating the appointment may include nonpayment of fees, the process has exhausted itself, safety concerns, a lack of reasonable progress despite the best efforts of the parties, one of the parties is a perpetrator of family violence, or the parenting coordinator is unable or unwilling to serve.

LSA-R.S. 9:358.8, LA R.S. 9:358.8

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LSA-R.S. 9:358.9

§ 358.9. Limitation of liability

Effective: August 15, 2007

[Currentness](#)

No parenting coordinator shall be personally liable for any act or omission resulting in damage, injury, or loss arising out of the exercise of his official duties and within the course and scope of his appointment by the court. However, this limitation of liability shall not be applicable if the damage, injury, or loss was caused by the gross negligence or willful or wanton misconduct of the parenting coordinator.

**Credits**

Added by [Acts 2007, No. 265, § 2](#).

LSA-R.S. 9:358.9, LA R.S. 9:358.9

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LSA-R.S. 9:359

§ 359. Short title

Effective: August 15, 2010

[Currentness](#)

This Subpart may be cited as the “Military Parent and Child Custody Protection Act”.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359, LA R.S. 9:359

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LSA-R.S. 9:359.1

§ 359.1. Definitions

Effective: August 15, 2010

[Currentness](#)

As used in this Subpart, the following terms shall have the following meanings:

(1) “Deploying parent” means a parent of a minor child whose parental rights have not been terminated and whose custody or visitation rights have not been restricted by court order to supervised visitation only, by a court of competent jurisdiction who is deployed or has received written orders to deploy with the United States military or any reserve component thereof.

(2) “Deployment” means military service in compliance with mandatory written orders, unaccompanied by any family member, for combat operations, contingency operations, peacekeeping operations, temporary duty, a remote tour of duty, or other active service.

(3) “Order” means any custody or visitation judgment, decree, or order issued by a court of competent jurisdiction in this state or any judgment of another state which has been made executory in this state.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.1, LA R.S. 9:359.1

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Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.2

§ 359.2. Final order; modification prohibited

Effective: August 15, 2010

[Currentness](#)

The court shall not enter a final order modifying the existing terms of a custody or visitation order until ninety days after the termination of deployment; however, if the matter was fully tried by a court prior to deployment, the court may enter a final order at any time.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.2, LA R.S. 9:359.2

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LSA-R.S. 9:359.3

§ 359.3. Material change in circumstances

Effective: August 15, 2010

[Currentness](#)

Deployment or the potential for future deployment alone shall not constitute a material change in circumstances for the permanent modification of a custody or visitation order.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.3, LA R.S. 9:359.3

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LSA-R.S. 9:359.4

§ 359.4. Temporary modification

Effective: August 15, 2010

[Currentness](#)

A. An existing order of custody or visitation may be temporarily modified to reasonably accommodate the deployment of a parent. Any such order issued in accordance with the provisions of this Subpart shall be entered as a temporary order by the court.

B. Unless the court determines that it is not in the best interest of the child, a temporary modification order shall grant the deploying parent reasonable custody or visitation during periods of approved military leave if the existing order granted the deploying parent custody or visitation prior to deployment. All restrictions on the custody or visitation in the existing order shall remain in effect in the temporary modification order.

C. A temporary modification order shall specify that deployment is the reason for modification and shall require the other parent to provide the court and the deploying parent with written notice thirty days prior to a change of address or telephone number.

D. The court shall have an expedited hearing on any custody or visitation matters, upon the motion of a parent and for good cause shown, when military duties prevent the deploying parent from personally appearing at a hearing scheduled regularly on the docket.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.4, LA R.S. 9:359.4  
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LSA-R.S. 9:359.5

§ 359.5. Termination of temporary modification order

Effective: August 15, 2010

[Currentness](#)

A. A temporary modification order terminates by operation of law upon the completion of deployment, and the prior order shall be reinstated. If the other parent has relocated with the child in accordance with the provisions of [R.S. 9:355.1 et seq.](#), custody or visitation shall be exercised where the child resides, pending further orders of the court.

B. Notwithstanding the provisions of Subsection A of this Section, the court may, upon motion alleging immediate danger or irreparable harm to the child, grant an expedited hearing on the termination of the temporary modification order and the reinstatement of the prior order, or the court may grant an ex parte order of temporary custody prior to the reinstatement of the prior order. Any ex parte temporary order shall comply with the provisions of [Code of Civil Procedure Article 3945](#).

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.5, LA R.S. 9:359.5

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LSA-R.S. 9:359.6

§ 359.6. Delegation of visitation

Effective: August 15, 2010

[Currentness](#)

The court may delegate some or all of the deploying parent's visitation, upon motion of the deploying parent, to a family member with a substantial relationship to the child if the court determines it is in the best interest of the child. For the purposes of this Section, the court shall consider [Civil Code Article 136](#) in determining the best interest of the child. Delegated visitation shall not create standing to assert separate visitation rights. Delegated visitation shall terminate by operation of law in accordance with the provisions of [R.S. 9:359.5](#) or upon a showing that the delegated visitation is no longer in the best interest of the child.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.6, LA R.S. 9:359.6

Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated  
Louisiana Revised Statutes  
Title 9. Civil Code Ancillaries  
Code Book I. Of Persons (Refs & Annos)  
Code Title V. Divorce (Refs & Annos)  
Chapter 1. Divorce (Refs & Annos)  
Part III. Child Custody (Refs & Annos)  
Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.7

§ 359.7. Testimony; evidence

Effective: August 15, 2010

[Currentness](#)

The court shall permit the presentation of testimony and evidence by affidavit or electronic means, upon motion of a parent and for good cause shown, when military duties prevent the deploying parent from personally appearing.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.7, LA R.S. 9:359.7

Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated

Louisiana Revised Statutes

Title 9. Civil Code Ancillaries

Code Book I. Of Persons (Refs & Annos)

Code Title V. Divorce (Refs & Annos)

Chapter 1. Divorce (Refs & Annos)

Part III. Child Custody (Refs & Annos)

Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.8

§ 359.8. Lack of existing order of custody or visitation

Effective: August 15, 2010

[Currentness](#)

When an order establishing custody or visitation has not been rendered and deployment is imminent, upon the motion of either parent, the court shall expedite a hearing to establish a temporary order in accordance with this Subpart.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.8, LA R.S. 9:359.8

Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated

Louisiana Revised Statutes

Title 9. Civil Code Ancillaries

Code Book I. Of Persons (Refs & Annos)

Code Title V. Divorce (Refs & Annos)

Chapter 1. Divorce (Refs & Annos)

Part III. Child Custody (Refs & Annos)

Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.9

§ 359.9. Duty to cooperate; disclosure of information

Effective: August 15, 2010

[Currentness](#)

A. When military necessity precludes court adjudication prior to deployment, the parties shall cooperate in custody or visitation matters.

B. Within ten days of receipt, a copy of the deployment orders shall be provided to the other parent. When the deployment date is less than ten days after receipt of the orders, a copy shall immediately be provided.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.9, LA R.S. 9:359.9

Current through the 2012 Regular Session.

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Code Title V. Divorce (Refs & Annos)  
Chapter 1. Divorce (Refs & Annos)  
Part III. Child Custody (Refs & Annos)  
Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.10

§ 359.10. Appointment of counsel

Effective: August 15, 2010

[Currentness](#)

When the court declines to grant or extend a stay of proceedings in accordance with the Servicemembers Civil Relief Act, [50 U.S.C. Appendix Section 521-522](#), upon motion of either parent or upon its own motion, the court shall appoint an attorney to represent the child in accordance with the provisions of [R.S. 9:345](#).

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.10, LA R.S. 9:359.10  
Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated  
Louisiana Revised Statutes  
Title 9. Civil Code Ancillaries  
Code Book I. Of Persons (Refs & Annos)  
Code Title V. Divorce (Refs & Annos)  
Chapter 1. Divorce (Refs & Annos)  
Part III. Child Custody (Refs & Annos)  
Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.11

§ 359.11. Jurisdiction

Effective: August 15, 2010

[Currentness](#)

When a court of this state has issued a custody or visitation order, the absence of a child from this state during the deployment of a parent shall be a “temporary absence” for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act and this state shall retain exclusive continuing jurisdiction in accordance with the provisions of [R.S. 13:1814](#). The deployment of a parent may not be used as a basis to assert inconvenience of the forum in accordance with the provisions of [R.S. 13:1819](#).

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.11, LA R.S. 9:359.11

Current through the 2012 Regular Session.

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Chapter 1. Divorce (Refs & Annos)  
Part III. Child Custody (Refs & Annos)  
Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.12

§ 359.12. Attorney fees

Effective: August 15, 2010

[Currentness](#)

The court may award attorney fees and costs when either party causes unreasonable delays, fails to provide information required in this Subpart, or in any other circumstance in which the court considers it to be appropriate.

**Credits**

Added by [Acts 2010, No. 739, § 1](#).

LSA-R.S. 9:359.12, LA R.S. 9:359.12  
Current through the 2012 Regular Session.

West's Louisiana Statutes Annotated  
Louisiana Revised Statutes  
Title 9. Civil Code Ancillaries  
Code Book I. Of Persons (Refs & Annos)  
Code Title V. Divorce (Refs & Annos)  
Chapter 1. Divorce (Refs & Annos)  
Part III. Child Custody (Refs & Annos)  
Subpart H. Military Parent and Child Custody Protection Act

LSA-R.S. 9:359.13

§ 359.13. Applicability

Effective: August 15, 2010

[Currentness](#)

The provisions of this Subpart shall not apply to any custody or visitation order requested in a verified petition alleging the applicability of the Domestic Abuse Assistance Act, [R.S. 46:2131 et seq.](#), [Children's Code Article 1564 et seq.](#), or the Post-Separation Family Violence Relief Act, [R.S. 9:361 et seq.](#)

**Credits**

Added by [Acts 2010, No. 739, § 1.](#)

LSA-R.S. 9:359.13, LA R.S. 9:359.13  
Current through the 2012 Regular Session.